"landlord," in case the "landlord" consists of "a number of persons," to certify the copy under section 34 under his hand? It does not appear that the authority of a *naib* or *gumashta* under section 229 would extend to doing this.

CHAPTER IV.

8. Does not appear to call for special notice.

CHAPTER V.

9. *Sections* 45 *and* 47.—The provisions of these sections are undoubtedly very favourable to the raiyat. In as far as they are unfavourable to the landlord, he has principally himself to blame, for they have been necessitated by the devices which he has employed in order to make it as difficult as possible for the raiyat to acquire a right of occupancy, and to prove his right when he has got it.

10. *Section 46* —Seems to me to be fair to both parties.

11. *Section 48.*—This is an entirely new provision of law. I should imagine that it will probably remain almost a dead letter; but there seems no harm in making it possible to create a right of occupancy by contract, if any proprietor or permanent tenure-holder chooses to do so.

12. *Section 49.*—Does not appear to me fair to the landlord. Its retention in the Bill would not improbably have the effect (which doubtless was not intended by the framers) of causing the landlords to take measures to render it practically inoperative by ejecting tenants from *khamar* land, or by at once entering into engagements with them for fixed periods in anticipation of the accrual of the rights of occupancy that would otherwise be acquired under its provisions.

13. *Sections 51 to 55 inclusive.*—Which relate to the landlord's right of pre-emption, appear to me to be equitable. The term "estimated value" in sections 51 and 54 is, however, not perfectly clear. By whom is the value to be estimated, and how far are the parties, or either of them, to be bound by the estimate?

14. *Section 56.*—Appears to me exceedingly hard upon the landlord. Its object is stated to be to prevent the landlord from buying up occupancy rights on a great scale, and locating ordinary raiyats on the land. I think that a less objectionable method of securing the same object would be to prohibit the purchase by the landlord of occupancy rights, except in the cases provided for by sections 51 to 55 It is scarcely likely that his purchases under those sections would be very considerable. At present, as the Second Subordinate Judge observes, as the Bill stands, all that a landlord is to get practically by his purchase is the power of keeping out a tenant to whom he objects, and this seems scarcely a fair and sufficient return for his outlay. If he is allowed to buy the occupancy right at all, he is fairly entitled to obtain, by his purchase, the full advantages that would be obtained by any other purchaser.

15 The provisions which render it impossible for a tenant to contract himself out of his occupancy right, as between the landlord and himself, are strongly objected to by Baboo Amrita Lal Pal; but they appear to me necessary, considering the relations which prevail generally in Bengal between landlord and tenant. The Subordinate Judge suggests that such contracts should be disallowed, only on proof of undue influence; but on the one hand, practically, a raiyat would seldom, if ever, be able to prove undue influence where it had really been exercised, while on the other hand he might frequently raise the plea in respect of perfectly fair transactions, if he afterwards repented of his bargain.

CHAPTER VI.

16. Has my general approval. It seems to me, however, that their should be some attempt to define the term "staple crops" which occurs in several places in the course of the chapter, as a good deal may turn on its precise meaning. If a general definition of the term is not practicable, there should be some means by which it should be authoritatively and publicly declared what are "staple crops," for the purposes of the Act, in different divisions or districts. The table of rates would be of great utility: it will be for the Revenue authorities to ascertain how far its preparation will be possible. The price-lists to be prepared by the Collector under the provisions of section 83 will be very useful, if care is taken to secure accuracy, or very mischievous otherwise.

CHAPTER VII.

17. *Section 86.*—I doubt the justice of giving compensation in the case of the ejectment of a raiyat, through his own fault, from *bastu* land.

CHAPTER VIII.

18. I should like to see it definitely stated what are the rights of an ordinary raiyat as to the use of the land. As regards the occupancy raiyat, it is provided in section 50 that he may use the land in any manner which does not render it unfit for the purposes of the tenancy. Is it intended to be implied, from the absence of such an express provision in the case of the ordinary raiyat, that his right to the use of the land is more restricted? This is a question of considerable importance in the indigo districts of Behar. An attempt is being made to get rid, as far as possible, of the old *thikadari* system, and to encourage raiyats to

grow indigo independently entirely on their own account, as they would any other crop, in order to sell it to the factories. This system deprives the landlord of the advantage which he had over a factory, under the *thikadari* system, of being able to screw up the rent of the village leased to an amount far above what the rent-roll of the village would justify, because the factory would, if it lost the *thika*, have no means of growing or obtaining sufficient indigo plant for manufacture. It is accordingly naturally to be expected that certain landlords should not look very favourably upon it, and should endeavour to put difficulties in the way of its extension. I take it that the occupancy raiyat can undoubtedly, under the provisions of section 50, grow indigo if he pleases in spite of the landlord. Can the ordinary raiyat do so too?

19. *Section* 90.—It appears to me that the ordinary raiyat under the Bill acquires something very like a right of occupancy. Is a landlord never to let to an ordinary raiyat for a fixed term; and if he is to have that power, is not the raiyat to be liable to ejectment in execution of a decree for ejectment, passed on the ground that the term of the lease has expired? There is no provision apparently for such a case in section 90. Again, it seems to me only equitable that the landlord should have the power of ejecting an ordinary raiyat, after due notice, on paying compensation for improvements.

20. *Section 93.*—The idea of payment of compensation for disturbance is, so far as I am aware, altogether new to the country, and I do not think that the landlord should be burdened with such a condition.

CHAPTER IX.

21. I approve of the provisions of this chapter generally.

22. *Sections 100 to 102.*—The provisions contained in these sections should have a most beneficial effect. The difficulty and uncertainty now attending the trial of rent-suits in Behar, owing to the frequently utter worthlessness of the oral evidence and the prevalence of forgery on both sides, make the duty of deciding them most irksome and most painful to a conscientious judicial officer. The production of forged receipts is as common as that of false accounts, if not more so. I think, however, that it is very important that there should be some security provided against the substitution of forged receipts and counterparts. As long as either may be written on a scrap of loose paper, it will be open to the landlord to impugne the genuineness of the receipt, and to the tenant to impugne that of the counterpart. I think that the use of printed or lithographed cheque-books should be made compulsory, and that, in addition to the particulars specified in section 100, each receipt and counterpart should be required to be serially numbered. A similar provision would be useful in respect of the statement of account prescribed by section 101. It would be still better if it could be provided that only cheque-books supplied by Government should be used. Such books might be kept on sale at the district and sub-divisional revenue offices, as forms of application for copies are. At any rate, I am afraid that if receipts and accounts, and their counterparts, are to be written on loose scraps of common paper, we shall be very much where we are now.

23. *Sections 103 to 107.*—I suppose from section 106 that the "Officer" mentioned in section 103 is to be a Revenue Officer. If so, the word "Revenue" might with advantage be used in section 103. I am doubtful how far it is practicable or expedient for the officer receiving applications for deposit to exercise a discretion as to the receipt of the deposit. Where many such applications for deposit are made at a time, it seems to me that it would practically be impossible for him to come to a satisfactory decision on the matter at the time. I think that it would be better to receive all deposits tendered. Probably this is practically what it would come to in any case. I have no doubt that the present practice of requiring a declaration on solemn affirmation of previous tender is quite useless, and that the declaration has come to be a mere matter of form, if, indeed, it was ever anything else.

24. *Section 111* (*2*).—It has been held, in connection with the corresponding provision of Act X of 1859, that the period of grace may be extended at the discretion of either the Court of first instance or the Appellate Court. This question should be definitely settled.

25. *Section 118.*—It appears to me that the provisions of this section, if practically possible (which I doubt), are hard on the landlords, some of whom will have to send very long distances. If the papers are to be lodged in Government offices, I do not see why sub-divisional offices should not receive them as well as the office of the Collector of the district.

26. *Section 125* (*2*).—These provisions are very fair. The difficulty is, how the landlord is to know when the tenant's right, title and interest is brought to sale. Ought not a notice to be served upon him? There is the same difficulty as to section 52: I omitted to notice it in its place.

CHAPTER X.

27. I approve of all the provisions of this chapter.

CHAPTERS XI & XII.

28. Appear to me to be very useful.

CHAPTER XIII.

29. I could not recommend the retention of the provisions of the present law as to distraint. Those of the Bill do not appear to me open to the same objections. But I should think

it a question whether the landlords would not as soon see the right of distraint abolished altogether, as restricted to the extent proposed. As regards section 179 (1), the mention of the Board of Revenue appears to be a mistake As the administration of the law relating to distraint is to be in the hands of the Civil Courts, the Board of Revenue does not seem to be the proper authority to make rules.

CHAPTER XIV.

30. *Section 188.*—Is considered by the Second Subordinate Judge and the Rent Suit Munsif as leaving it open to doubt whether a suit for rent, amounting to less than Rs, 1,000, due on account of land valued at more than Rs. 1,000, should not be instituted in the Court of a Subordinate Judge. I do not see the same difficulty myself, as in section 188 it is only a question of the *local limits* within which the cause of action shall be deemed to have arisen, and not of the court which is to have jurisdiction. I mention the point, however, in case it should be thought well to make any alteration to prevent misunderstanding.

31. *Sections 191 to 198.*—I think that the simplification of procedure in the simpler classes of suits is a great improvement. At the same time I do not think that it could be safely made more summary. I feel some doubt as to the expediency of the limit of Rs. 50 in section 198 *b)*, and should be more inclined to adopt that of Rs. 10 originally proposed by the Rent Commission.

32. The provisions of the remaining sections of Chapter XIV appear to me to be equitable.

33. I have no particular remarks to make with respect to the remaining chapters of the Bill.

34. The First Subordinate Judge and the Rent Suit Munsif suggest that provision ought to be made for the case of suits where there are several co-sharers as the "landlord" and there is no common manager. I think that it would be well that this question should be dealt with, and that it should be settled under what conditions separate suits may be brought by the different co-sharers, if at all.

35. The First Subordinate Judge is of opinion that provision ought to be made for the forfeiture of tenancy by a tenant's disclaiming the landlord's title. I am of the same opinion. The tenant is amply protected by the Bill, and if he chooses to conspire with another person against his landlord's title, I think he ought to suffer for it. This remark should, perhaps, rather have come under the sections relating to ejectment, but the matter was overlooked by me at the time.

36 The Rent Suit Munsif calls attention to the hardship to which ignorant raiyats are subjected in consequence of *batwara* proceedings, the practical result of which is frequently to enhance their rents where their holdings come within the shares of more than one landlord Though there is no professed enhancement, each sharer demands something more than his proper proportion of the rent previously paid, and as these demands are separately made, an ignorant raiyat is not in a position to contest them. It is only when he has paid them all that he finds that the aggregate exceeds the amount that he used to pay before the *batwara*. The Rent Suit Munsif suggests that the law should require the ameen employed on the *batwara* proceedings to prepare a list showing the *jamas* payable by the raiyats under the new arrangement. The evil is certainly a serious one, and the remedy suggested by the Munsif seems to me worthy of consideration.

Dated Midnapore, the 26th May, 1883

From—W. F. MERES, Esq., Judge of Midnapore,

To—The Registrar of the High Court, Calcutta.

I have the honour to submit the following notes upon the draft Bengal Tenancy Bill, 1883.

Section 3. "*Raiyat.*"—It is to be regretted that the border line between a raiyat and a tenure-holder has not been drawn in the Bill. The definition as it stands in paragraph 5 would include the case of a person who takes a grant of waste land, and who, after clearing and embanking where necessary, sublets it to tenants. For instance, here in Midnapore there is along the coast a large tract of land formerly occupied by Government for the manufacture of salt. At that time the land was waste and mainly covered with jungle. On the abolition of the salt manufacture, the land was surrendered to the zamindars in whose estates it lay. It has since been let by the zamindars in large or small blocks to mere speculators, sometimes for a term, sometimes without any agreement as to fixity of rental or period of tenure. The lessee sometimes, but not always, clears a larger or smaller portion, or perhaps throws up an embankment, and induces cultivators to take up small blocks and bring them under cultivation.

These small cultivators are fairly entitled to acquire occupancy rights against the speculator, but they cannot do so if he is classed as a raiyat.

The same state of things occurs in the jungle mehals of the north-west of this district. There the land is poor in quality and largely covered with sâl timber or small brushwood. The zamindar has granted a putni of a large tract of this country to an European firm. The putnidars, with a view to get the land settled up, have given vaguely worded leases, nominally of the better lands of a village only, often only of a few bighas, but not settling with more than one tenant in each village area, unless the area is unusually large. There seems to have been a tacit understanding that the tenant, if he could, might bring the whole village under cultivation. A general rise of prices with increased pressure of population on the land has made it easy for these tenants to find cultivators ready to undertake the labour and risk of clearing and bringing under cultivation most of the land in the lessee's village boundary; and the putnidars on

re-measurement have repeatedly found the lessee in occupation of ten times the area mentioned in the lease.

From what I know of the districts of Balasore and Backergunge, I believe similar instances could be found there. As far as I know, whenever cultivation is spreading and inferior soils are being brought under tilth, some such system as this prevails. It is of great importance that the courts should not be left to decide the relative status of the contractor and the cultivator in cases of this sort. Generally it is not difficult for the contractor to decide for himself whether he shall prove that he is a tenure-holder or a raiyat. The basis on which he may enhance, or on which he may be enhanced, depends upon his own status with reference to the putnidar on the one hand and to the tenant on the other. A good opportunity now presents itself of assisting courts in this difficulty, and even though it may not be best to define a raiyat, the Legislature, rather than the courts, should undertake this duty. The definition should be drawn so as to include the case of a man who takes up land for cultivation by himself, or by his family or servants, and it should exclude the case of a man who takes land merely to sub-let as a speculation. A maximum limit of a raiyat's holding is, therefore, necessary, and I may say that after 18 years' service in the Lower Provinces, I have never met with an instance of a genuine cultivating tenant who held 50 bigahs of arable land.

Section 3, clause 19. "*Signed.*"—The definition is reproduced from the C. C. P. What does the last paragraph mean? The words are—"It also includes stamped with the name of the person referred to"—"referred to" where? In the first clause of the definition, *i. e.*, the marksman, or to the person whose name is engraved on the seal?

Section 26.—Why should ejectment of a permanent tenure-holder be limited to the case of breach of a written contract only, carrying that penalty? There may be no written agreements that the ejectment should be the penalty of denial of the landlord's titles, but this is the fitting and well-recognised consequence of such an attitude in the tenant. The same remarks apply to section 50, clause *d*.

Section 27.—The provision that the landlord shall give the tenure-holder seeking registration a statement in writing of the reasons, for his refusal to register will, I fear, in practice be found inoperative.

Section 32.—If the court's order is to have the force of a decree, and the court on the pleadings finds it necessary to try the claimant's title to the tenure of which he desires registration, what will be the effect, as between the parties, of the court's decision on the petitioner's title? Is there any pecuniary limit as regards jurisdiction? This section seems to contemplate local jurisdiction merely, irrespective of the value of the property involved.

Section 34.—Provision should be made to allow of the delegation of duty of signing certified extracts of the zamindar's register. In practice it will be found difficult for a female zamindar to "certify under her hand" the extract. If the zamindar neglects or refuses to furnish the copy, or to accept a tendered fee, by whom is the fine awardible under sub-section 35, clause 2, to be inflicted? Would it not be well to provide that the claimant may serve his notice of application through the civil court or the Collector on depositing the proper fee? I think it likely that parties will find it difficult if not impossible, to move the zamindar to compliance, without official assistance, in applying for the certified extract.

Section 35.—To the last words of this section should be added "and the taking of copies under section 34." Speaking generally of the provisions of chapter 3D, I think there will be practical difficulties in making use of them. Except in very small estates, the zamindar never comes in personal contract with his tenants. Parties desirous of registration will find themselves, as now, obliged to deal with local agents whose interest it is to make as much as possible out of every change of ownership. Under-tenures commonly undergo division by sale and inheritance without reference to the zamindar. As long as the proprietors can agree amongst themselves, the rent continues to be paid under the old recorded proprietor's name. It is doubtful if zamindars, who can look to the tenure if the rent falls into arrear, will trouble to search for the actual tenure-holders under section 33, where the main result of the action in this direction will be to put fees into their agent's pockets. I can call to mind but one case of a tenure-holder seeking to enforce registration under section 6, Regulation VIII of 1879.

I regret that it has not been found possible to declare a rebutable presumption in favour of all ryots, being settled ryots, in respect of the land actually in their occupation at the time of the passing of the Act. It is hardly questioned that the vast majority of the cultivators have acquired occupancy rights under the existing 12 years' rule: why should the weaker party be put to the trouble of proving that he possess rights, the existence of which is hardly doubted? Why must he prove that he has occupied land in a village or estate for 12 continuous years? If any time is insisted on, why twelve years? why not a lesser number, as five or three? In practice it is difficult for ignorant people to prove facts which occurred twelve years ago. Although the use of receipts for rent is more common than formerly, still in many places in the interior they are hardly known, or not insisted on. I believe that there are new ryots in possession of genuine receipts for twelve years, all claims of rent having nevertheless been fully discharged.

Section 50.—May an occupancy ryot at his discretion fell timber of over twelve years' age standing on his holding?

Section 51.—What is the meaning of "*estimated value*" at 10 per cent., below which a landlord may purchase, in the case of an occupancy ryot selling without having first given the landlord notice of sale?

I think it questionable whether this rule, requiring notice to the landlord before a sale of a jote, will be of much service to the landlord. As a rule, they are not given to the purchase of occupancy rights. They sometimes ask permission to bid at sales for these rights in execution of decrees for rent, but they do this mainly for the purpose of bidding against the defaulter's relations, so as to prevent them from buying in far below the real value. This and the remaining sections of this chapter will, I fear, give trouble and delay to the ryot vendor, and will hamper dealings in land, which by section 50, clause *f*, are declared free.

CHAPTER VIB.

At first sight the proposals of this chapter are attractive, but after much consideration I have arrived at the conclusion that they are dangerous, and that in them lies what is likely to more than counterbalance the benefits conferred on the peasantry of the lower provinces by the rest of the Bill. The consequences of an error by the officer who prepares the table, in over-estimating the normal produce of its average money value, or in fixing too high a minimum, will be nothing short of the ruin of the tenantry of the tract dealt with. As the draft stands, I doubt if the local Government, after directing at the time of publication the period for which a local area table is to remain in force, could cancel the table, if it desired to do so, on the ground that it was framed on erroneous data, or that it was otherwise inequitable. The difficulty of collecting really accurate data for the table of rates will be found to be very great. A notable instance in point has recently come under my own notice in this district. A very large property, known as the Majnamootha Estate, extending over several pergunnahs, has been lately re-settled by Government owing to the default of the proprietors. The settlement officer was specially selected as a man of considerable revenue experience; he was assisted by a special staff and was engaged for nearly three years on the work. While the settlement was in progress, it was found necessary to pass a local Act throwing the onus of disproving the settlement officer's rates on the tenants, who were dissatisfied with the assessment of the settlement officer.

If the table of rates has been published, and it is unfairly hard upon the tenants, the error will probably not appear until the mischief is done. The persistence with which ryots cling to their jotes is remarked by all who have had to deal with them. As a rule they hold on until both capital and credit are exhausted.

If this sub-chapter is to be retained, would it not be well to draw the settlement officer's attention prominently to the following, amongst other, considerations?

The incidence of the population on the soil, the rate at which this pressure is increasing—as to which see the last two census reports—the rate at which inferior soils are being brought under cultivation, therewith the consequential effects of diminishing the area of pasturage, first upon the cattle, draught and milch, upon which is sunk a large part of the agriculturist's capital, and secondly upon the population, and particularly upon the young, in diminishing supplies of milk and butter available to a people mainly subsisting upon a farinaceous dietary. Ought he not also to be reminded that the vast bulk of the land is capable of producing but one crop in the year; and that in a purely agricultural community the cultivator, as a condition of his existence, must have not only fair interest on his capital employed on his land, and fair wage for his own labour, but also enough to carry on from one harvest to the next?

CHAPTER IXC.

The provisions for giving receipts and accounts would be excellent if they applied only to large zamindaries of Government estates. But it seems to me hopeless to expect that the rules of this sub-chapter would be adhered to by petty tenure-holders or ryots who sublet, whatever the penalty might be for the breach of them. There are very few zamindaries which are not sublet in farm or in putni. These again are mostly sublet, and so on, until the person who actually gets in the ryot's rent is often little higher than a ryot or petty farmer himself. These are the persons to whom the rules would be applicable. I think it would be enough to provide that the receipt should shew date of payment, amount, payer, payee, the holding for which, and the year for which, the payment was made; and I would suggest that as an incentive to honest dealing, it should be at the discretion of the court to deduct double the amount of any payment which the tenant proved he had made, and for which credit had not been given in the plaint.

CHAPTER IXD.

The proposed rules for the deposit of rent are satisfactory improvements upon the existing ones.

CHAPTER IXE.

It would be well to state more plainly that the court is not bound to award 12 per cent. interest in all cases of arrears. The meaning of the words "liable to" seem plain enough, but I know that this is one of the commonest errors made by young native officers, and with serious results to the unfortunate defendants.

CHAPTER IXF.

I fear the procedure laid down in this sub-chapter is too slow. What happens is that the landlord delays in attending at the division, perhaps from mere indolence, perhaps

in the hope that the man who raised the crop may consent to an unequal division, rather than run the risk of bad weather and the consequent loss of all The Act requires the party aggrieved to come to the Collector, who appoints a Commissioner the Commissioner proceeds to the spot, and, with the assistance of assessors, makes a valuation the Commissioner then reports to the Collector, the Collector hears objections, and may order a fresh enquiry. At every stage there must be some, and may be considerable, delay. The costs will also be of necessity relatively heavy. I would suggest that on application to the Collector by either party who complains that he is hampered in getting his share, a notice should be served by registered letter on the opposite party, directing him to attend and assist in the division within a time to be mentioned in the notice, at the expiration of which the party at whose instance the notice was served should be at liberty to remove the crop, and that it should be presumed that the amount of crop and its value mentioned in the application for the notice was correct.

CHAPTER XIII.

The right of distraint might now well be abolished. The procedure laid down is too elaborate to be honestly followed My own experience is that landlords are getting shy of making use of this right, unless they happen to be very powerful people, and have some object in view, as well as the getting in of the rent The right is open to very great abuses. Under the present arrangement for the accelerated trial of rent suits, plaintiffs have very little cause for complaint as to delay. Thus in my head-quarters court a man may get an *ex parte* decree for arrears in about a month from the filing of his plaint, and in about 17 days from filing the plaint if the defendant contests the claim unsuccessfully The plaintiff may verbally apply for execution as soon as his claim is decreed. This seems reasonably expeditious. I doubt if he would get in his money any faster under the distraint procedure. However, whether the chapter remains or not is not of great moment as section 167 is calculated to make landlords hesitate about the use of the right

I regret that I have not found time to consider the drafting of the Bill. Pressure of business has prevented me from giving as much time as I wished to this interesting measure.

No 251, dated Barisal the 2nd June 1883.

From—J F BRADBURY, Esq Offg. District Judge of Backergunge,

To—The Registrar of the High Court of Judicature at Fort William in Bengal

YOUR No. 1157D of the 23rd April 1883

I have the honour to subjoin my comments on the draft of the Bengal Tenancy Act, and to observe, *imprimis*, that the interpretation clauses are defective, in that they do not include a definition of a tenure. Clause 3 of section 3 defines it to include an under-tenure, and the interest of every tenant of the class referred to in section 11. The term "under-tenure" is misleading. Every tenure is holden of somebody, and under the person of whom it is holden It may be rent or revenue-free, but in every case it is held of the original grantor or creator thereof, or his successors The use of the term serves no object, and it may well be eschewed, and the word tenure exclusively employed in its stead What, however, is a tenure? Does it denote an interest in land permanent, transferable and heritable, or is it intended to include all interest inferior to those of the proprietors of an estate? Apparently the former, for a distinction is made between a tenure-holder and a tenant.

2. The Statement of Objects and Reasons explains why a complete definition of a tenure (or under-tenure) has not been attempted, but the opportunity should be taken to remove certain doubts which have arisen under the present law 7 W.R., 15, decides that the sub-letting of his land by a ryot does not alter the nature of a holding in its inception *ryoti*, nor necessitate its registration: and this principle it is proposed to enact by the explanation of clause 5 of section 3 of the Bill and section 50 (*c*).

The converse of this proposition has not, however, been enacted. Suppose the holder of a tenure, otherwise transferable, permanent and heritable, say one designated a *halawah*, to which in his district ordinarily, and in the absence of express stipulation to the contrary, are attached the incidents of permanence, heritability and transferability: suppose, I say, the holder of such a tenure cultivates the soil thereof himself, is he to be deemed a ryot or a tenure-holder? The revenue athorities in their proceedings under Act VIII (B.C.) of 1879 (sections 20 and 121 of the Bill) have, in this district treated such a tenant as a ryot, but from this interpretation of the law I dissent. The question can, and should be authoritatively settled now, and by decision not left to inferences from sub-section 6 of section 21. My opinion is that once a tenure-holder always a tenure-holder, and that, if the tenure be, from its nature, by custom, or by agreement with the original lessor permanent, transferable, and heritable, it is immaterial whether the holder thereof sublets or himself cultivates the whole or a part of the soil thereof.

3. The definition of an "arrear" is likewise defective, for frequently the rent is not payable in instalments, but in a lump at the end of the year.

4. In clause (*e*), section 4, the word "out" is superfluous.

5. *Section* 6—Is not happily worded. How and why is land which is admittedly not *khamar* but which is comprehended in a permanent, heritable, and transferable tenure within an estate, and cultivated by the holder of such tenure, to be deemed *ryoti* land of such estate?

The framers of the section seem to have ignored estates not consisting exclusively of *kkamar* and *ryoti* land. Section 13 is obnoxious to the same criticism.

6 What is intended by "terminable' in section 19 · "determinable by notice," or "for a term?"

7 Is the application of section 20 to be confined to districts in no part of which land has been permanently settled, or is it to govern settlements of all land not permanently settled in whatever district situate? The language of the section is susceptible of the latter interpretation only, but the marginal note favours the former

What is the express recognition contemplated by section 20? Must such recognition be recorded? How can the non-recognition of a right affect such right? Suppose the revenue authorities have in all previous settlement proceedings recorded the existence of a tenure, and at no date enhanced the rent thereof, are they at liberty to enhance the rent thereof whenever so minded, and by what restriction is the enhancement to be limited?

Again, who is an authority empowered by the Government to make definitively settlements? The Commissioners and the Board of Revenue confirm settlements, but make none. The Collector and his subordinates make them, but not definitively, for their orders are not final, nor, I believe, of any effect till confirmed.

Another question which some appeals recently heard by me suggest is this. sections 20 and 121 are designed to replace Act VIII (B.C) of 1879, which the Bill proposes to repeal, but no portion of the Bill empowers the revenue authorities to enhance the rents of a tenant of an estate which is private property, but which is periodically settled by them, and the rents and profits of which they realise by reason of the recusancy of the proprietors who refuse to accept the terms of settlement offered by the Revenue authorities, and are content with the allowance denominated *malikhana*

Sections 20 and 121—Do not provide for such a case

8 *Section 21*—What is "beneficial" rent? The term is novel in Indian law, and requires explanation

9 *Sections 25, 27, 29, 30, 31, 209*—What is a "permanent" tenure? One that is transferable at will and heritable? And is every right of occupancy and every tenure to which section 14 applies to be deemed a permanent tenure?

10. The order under section 32, having the force of a decree, will, I presume, be appealable, but how is it to be enforced? Under section 260, C P. C.? But if the landlord continues recusant, and will not register in spite of the attachment of his person, or his property, or both, what is to be the remedy of the transferor or transferee? The simplest course will be to enact that the order shall have the force of a decree in a suit, and shall operate as the registration of the transfer or transmission of the tenure

11 What will be the effect of non-compliance with the rules framed under section 3 ? Will any informality vitiate the registration, and is the transferor or transferee or successor to suffer therefor? Is the fine with which a breach is punishable to be recovered by a prosecution before a Magistrate?

12 Schedules 2 and 3 should be incorporated in chapter IV, and not relegated to an appendix

13 "Whether before or after the commencement of this Act," in sections 45 and 46, should be amplified so as to express whether wholly before or after, or partially before and partially after such commencement

Is a person to be deemed, for the purposes of section 45, to have held as a ryot *ryoti* land held as a ryot by a person whose heir he is, though such land may have, by devise or otherwise, passed to another?

14 *Section 50*—Will a raiyat with a right of occupancy be entitled to fell or grow timber in the absence of express stipulation to the contrary.

15 To what Civil Court must the application under sections 51, 54, and 55 be made? Will a Small Cause Court have jurisdiction to ascertain the price, and will the order under those sections be appealable or not?

16 How are the notices prescribed by the chapters III and V and other portions of the Bill to be served, and where an application or some other act is required to be made or done by the person on whom notice is served within a fixed period, what course is to be pursued if he seeks to make or do it after the expiry of such period, pleading that the notice was never received by him? Real cases of non-receipt of the notice are sure to occur in practice, and the plea of non-receipt of the notice will assuredly be falsely put forward in many other cases Some procedure for dealing with them should be prescribed, otherwise the prescription of a notice may be dispensed with

17 Again, in sections 51 and 54 the application must be made by the landlord within one month of the filing of the notice in the revenue office, but if the notice is not served within the month, through oversight, designedly, or from other cause, what then?

18. Again, if after the ascertainment of the price to be paid under sections 51, 54 and 55, the person in possession refuses to convey the occupancy right to the landlord, must the latter institute a regular suit for the conveyance, or will the court, upon ascertaining the price, have power to direct the execution of a conveyance forthwith, and give effect to such direction under section 260 or section 261?

The latter procedure will reduce litigation; and if orders under sections 51, 54, and 55 are appealable, will be unexceptionable in every respect.

19. *Section* 64.—"About the time at which those rates were fixed." These words are somewhat obscure. They mean, I suppose, "about the time at which were fixed the rates in force at the date of the preparation of the table."

20. *Section* 85.—If, as is often the case, the homestead is a part of a non-occupancy holding, will the tenant have different interests in different portions of such holding?

21. *Section* 86.—I presume the tenant may be permitted to remove the materials of his buildings, and in such a case he will be entitled to recover as compensation only such amount as may recoup him for the trouble and expense of re-erecting the same on another site.

22. *Section* 87.—How is the enhancement allowed by the section to be effected—by suit after notice, or by suit following on a notice, or otherwise?

23. The language of clause (*a*) of section 90 requires modification, for I presume that the mere falling into arrears will not justify ejectment at the will of the landlord, but he must sue therefor.

24. What civil court is intended by section 91?

25. Must section 92 be strictly construed: in other words, will a landlord be bound to sue for ejectment, or may he sue to recover arrears at the enhanced rate, as at present?

26. *Section* 97.—Is such a thing as rent payable at the end of the year to cease? In the absence of any agreement or custom, surely the most convenient rule is that the rent should be payable at the close of the year for which it is demandable, as now, and I suggest that the parties be left by section 98 to settle the number and dates of the instalments, with the restriction that in no case shall the former exceed four. The object—and a very desirable one it is—of protecting the ryot from frequent demands for fractions of his rent will be amply secured by the restriction without the interference of the Board of Revenue or any third party.

27. *Section* 102.—I presume the fines exigible under the Act are designed to be recoverable in the criminal courts.

28. A revenue officer is clearly intended by section 103 (*vide* section 106), and this should be expressed.

29. *Section* 104.—How is the revenue officer to satisfy himself that the applicant is entitled under section 103 to make the deposit judicially, that is, after taking evidence or otherwise? Will not the mere application be ordinarily sufficient to justify the receipt of the deposit, the tenant making it being responsible for any illegality or irregularity?

30. *Section* 111.—What is a non-transferable holding? That of an ordinary ryot is, I believe meant, but suppose such a ryot holds under a lease susceptible of assignment, will section 111 apply?

31. *Section* 122, *clause* 2.—How and where prescribed? What will be sufficient notice? How is it to be published, and how proved?

32. *Section* 125.—If the landlord holds no decree, and the amount in arrear is disputed, or there is collusion between the landlord and the tenant, will the court have authority to refer the landlord to a suit in lieu of enforcing the charge to the detriment of another creditor?

33. *Section* 133.—Will one of several co-landlords be entitled to measure independently of the others, or against their wishes?

34. *Section 135.*—Will the order under section 135 be appealable?

35. *Section 140*—Is obnoxious to the same animadversion as section 111.

36. *Section 141, clause* (*b*)—How and by whom prescribed, and how is such publication to be proved?

37. *Section 144.*—What will be effectual service, and will the order under section 144 be appealable or not?

38. *Section 148.*—Will the order under section 148 be appealable?

39. *Section 157.*—How and by whom prescribed, and how is much publication to be proved?

40. *Section 166*—"In addition to any other remedy to which he is entitled by law." May the landlord sue and distrain simultaneously for the same arrears?

In any case I conceive one of a co-proprietary cannot distrain for rent due to the whole of the co-proprietors jointly, and that should be clearly expressed.

41. *Section 168.*—Will the order under section 168 (2) be appealable?

42. *Section 191.*—Why are Courts, when disposing of suits of the nature described in section 191, to be debarred from ordering facts to be proved by affidavit? The provisions of sections 194 to 197 are now freely used, especially for the proof of service of process in suits heard *exparte*. Their application to such suits facilitates the rapid disposal of rent suits, and I fail to see what object is secured by enacting that affidavits are not to be used in the vast majority of suits under the Rent Law. Such enactment will merely prolong their duration.

43. *Section 195*—Is, I think, most objectionable. The law requires issues to be framed in every suit, but in practice issues are rarely recorded in rent suits, and when an appeal is preferred, it is only by reference to the written statement that the Appellate Court can usually ascertain what precise pleas the defendant took in the Court below. The judgment in the majority of rent suits does not state the issues, but disposes of the case summarily. The object of abolishing the right to present a written statement is to save time, but the presentation of a written statement occasions no loss of time whatever, and such a statement is frequently of the utmost value.

The present procedure in rent suits is as summary as it can be, while a record of evidence is indispensable, and section 196 is superfluous. Nothing more than a memorandum is now recorded, but even a memorandum takes time; and it is only by dispensing with a record of the evidence, and as a necessary corollary prohibiting appeals, that the trial of rent suits can be accelerated. Let the parties present what written statements they please. The mere reduction to writing of the pleas cannot delay. Why, therefore, prohibit it, except by leave of the Court?

44. *Section 199.*—If the defendant admits that a part only of the rent claimed is due, and that not to the plaintiff, but to a rival claimant, will section 199 apply? If not, section 199 will be a dead letter, as the defendant by pleading that the sum is one pice or one pie less than the plaintiff claims will be able to avoid the obligation of making the deposit.

45. *Section 203.*—"Before the date of his ejectment." Do these words denote the date of the actual ejectment in execution of a decree for ejectment, the date of the decree for ejectment, or the date of the institution of the suit for ejectment? Not the first, apparently, though that is the natural construction of the words, for it would conflict with the context of section 203 itself, and likewise with sections 204 and 206. Which of the others is the correct interpretation?

46. *Section 204.*—Will the rent payable under section 204 be assessable and recoverable in the course of the proceedings taken to execute the decree for ejectment, or will a separate suit be necessary? If the former, will the assessment and the order to pay the same be appealable? *N. B.*—Section 205.

47. *Section 208 (b).*—Will the tenure so recognized by the settlement authorities be inviolable and unavoidable merely during the term of the temporary settlement, or will it so continue always, even when the temporary is converted into a permanent settlement?

48. *Section 208 (c).*—What are permanent buildings? Masonry structures alone, or will a building with mat or wicker walls, and a thatched roof, solid, well constructed, and of large dimensions fall within the category. I know it is difficult to define permanence; but at least it may be expressed that the phrase permanent buildings is not to be confined to those of masonary alone.

49. *Section 212.*—The officer who holds sales is the nazir, and the nazir never issues or makes a sale notification, or proclamation. That is invariably the work of the Court ordering the sale. Does section 212 intend any change in this respect? I trow not, but its language is not happy.

50. *Section 211.*—What proof of service will suffice? Much will turn on the service of notice, as the purchaser will be bound to avoid within a year from the date of his obtaining knowledge of the incumbrance set up, and the incumbrance will be annulled from the date of service only. Service by post is least likely to be disputed, and most likely to be real.

51. *Section 216 (c).*—Is any, and if any what, notice to be given to the tenant of the claim under section 216 (c), and when must the claim be made? As soon as the sale is confirmed, I imagine; but within what interval of such confirmation?

52. *Section 217 (3).*—On what grounds can a plaintiff demand to have a sale set aside?

53. *Section 224 and Schedule IV, Part III.*—Where the judgment-debtor has by fraud or force prevented the execution of the decree, what will the limitation be? The Bill is silent on the point, and Act XV of 1877 does not supply the defect.

54. It is apparently the intention of the framers of the Bill that, with the exceptions enacted, all suits, appeals, and other judicial proceedings under the Bengal Tenancy Act shall be governed by Act XIV of 1882, but this should be expressly enacted to obviate misunderstanding. Similarly, the application of the Indian Limitation Act XV of 1877 to such suits, appeals, and proceedings should, not be left open to argument. Section 2 5 expressly excludes the operations of section 7, 8, 9 in certain cases, and section 224 likewise supersedes Act XV of 1877 in certain particulars. Are we to infer from this that in all other cases and particulars Act XV of 1877 will apply? Hitherto, this doctrine has never been laid down so broadly, though various provisions of Act XV of 1877 have been applied to suits, &c., under Act VIII (B. C.) of 1869. I suggest therefore that the new Bill distinctly enact the extent of the application of Acts XV of 1877 and XIV of 1882 to suits, appeals, and other proceedings under it.

55. Does section 222 govern such orders as those contemplated by sections 97, 98, 99, &c.?

56. The Court will observe that I have abstained from discussing the policy of the Bill and the amendments proposed of the present law. The main provisions of the Bill have been settled, and I conceive that it now only remains to so frame the Bill as to leave as little room as possible for discussion of the intention of the Legislature. I must, of course, have overlooked many points open to argument, which will strike others; but I trust that some of my comments have revealed defects in the language of the Bill, the correction of which may hereafter prevent litigation, and will certainly facilitate the interpretation of the measure by those who have to administer it.

No. 352, dated Mozufferpore, the 14th May 1883.

From—A. C. BEETT, Esq., District Judge of Tirhoot, Mozufferpore,

To—The Registrar of the High Court of Judicature at Fort William in Bengal.

In reply to your No. 1157E, dated 23rd ultimo, I have the honour to submit the following remarks

The basis of the longstanding controversy, of which we have the outcome in the Tenancy Bill now before the Viceregal Council, is, in my opinion, the loose employment of such words as "owner," "proprietor," "malik," and the like, and the importation into India of ideas from feudal England. No single class of men can claim the same absolute ownership or proprietorship in land that a man has in (say) a plate or a box of matches. A piece of land is a portion of the crust of the globe we inhabit, and it produces the unearned increment which is the support of life. Ownership in it is therefore necessarily liable to be subject to limitation to co-ownership in fact. To apply this principle practicably, it is necessary to take workable portions of the crust of the globe, *e. g.*, a village. This practical application I believe to have been at the bottom of the distinction between *khudkasht* and *pakasht* ryots The former were co-owners.

Occupancy right.—The fundamental idea connected by the word *khudkasht* was permanence. The test in old days of permanence was residence. The framers of Act X of 1859 kept to the fundamental idea, and varied the test in conformity with the altered conditions of the time to a holding for 12 years. I am glad to see that the period of 12 years is to be retained, and that it is not intended to travel as far as those enthusiastic gentlemen who proposed to act on the assumption that the legislators of 1859 did not understand the perpetual settlement. I cordially approve of that provision which lays down that a ryot who has held any land for 12 years (not necessarily the same land) in a village or estate should have the right of occupancy I see that some who admit this principle wish to limit it to definite quantities of land, but I think this is inconsistent with the larger principle of co-ownership When once a ryot has acquired the status of permanence, he is a co-owner in the village, and has the right to occupy whatever he holds.

Ordinary ryots.—As regards the "ordinary ryot" I disagree with the Bill. It is quite true that under the present law, if an ordinary ryot has received notice of enhancement and elects to stay, he cannot be compelled to pay more than a reasonable rent This is, however, nothing but the Judicial statement of an equitable principle. The reasonable rent which he can be compelled to pay is for the time he actually stays. But he can be ejected. To tell a zemindar that he cannot evict without paying ten times the increment of rent demanded, is to tell him he cannot evict at all The ordinary ryot should be left to make his own terms. We are supposed to be interpreting the permanent settlement, not altering it, and as I read it, the *pakasht* ryot (whose successor is the ordinary ryot) was not protected in any way.

Transferability of occupancy rights.—I have always held that these should be transferable, but with restrictions. I think a zemindar has a right to be protected from the incoming of an objectionable tenant. The proposed law strives to protect him by giving him the right of pre-emption, but it saddles this with the provision that the next tenant, whether a settled ryot or not, shall have a right of occupancy immediately. Unless therefore the zemindar is in a position to cultivate the land by his own ploughs, through his own servants (which is not often the case), the only way he can secure himself from an objectionable tenant is to throw away his money, and the operation may be repeated *ad infinitum*. I would allow of transfer in only two cases—(1) Voluntary transfer by the ryot (2) Compulsory sale by the landlord in execution of a decree for rent. As a remedy against the introduction of an objectionable tenant, I would give the zemindar a right of *veto* as to the transferee, subject to a summary appeal to the Collector or the Judge, who should finally decide whether the objection was reasonable or not Pre-emption might remain as an alternative. Foreclosure and compulsory sale, otherwise than by the landlord, I would prohibit. There is no doubt that at least in Bengal occupancy rights have been transferred, and there is an inevitable tendency to attach the power of transfer to any valuable right. But at the same time the Indian ryot is not yet a fit man to be allowed to walk alone. The present Bill recognizes this in the restrictions it places on his right to contract. There is always the fear least he should fall, bound hand and foot, into the power of the money-lender, a useful man in his way, and one always ready to help a ryot through difficulties as long as the ryot has a holding, but who would swallow him up bodily if he lost this. I would protect the ryot's holding as if it were a plough or any other agricultural implement. It is said that no harm has come where transfers have taken place, but we have not seen the effect of proclaiming the absolute legality and unrestricted power of transfer.

Procedure for recovery of rent.—I entirely agree that there is no royal road to the discovery of facts, but I think that an incentive should be held out to all zemindars to keep really trustworthy accounts, by telling them that any zemindar who can satisfy (say) the District Judge that his accounts prove themselves will be allowed a summary decree. Details might be easily settled. A zemindar should keep his accounts in solidly bound books, with pages numbered, bearing a certificate signed and sealed by (say) a Registrar, and his receipts should be in counterfoil form, &c. On the matter of receipts, I am glad to see the proposed provisions. No one who has seen the loose jummabundi papers, and scraps of receipts which come up to be "duly attested," can help wishing for a reform. The only way to effect one is to show zemindars that it would be worth their while to be more business-like.

Enhancement of rent.—I consider that the proposed provisions on this subject constitute the most hopeful feature of the Bill. The task of framing records of rights, tables of rates, &c., is no doubt a formidable one, but in the resolute facing of this difficulty lies the only chance of success for a Rent law in this country, however equitable may be its spirit, and however scientific may be its drafting.

No. 486, dated Alipore, the 18th May 1883.

From—C. B. GARRETT, Esq., Officiating District Judge, 24-Pergunnahs,

To—The Registrar of the High Court of Judicature at Fort William in Bengal.

In reply to your letter No. 1157F, dated 23rd ultimo, I have the honour to submit a report upon the Bengal Tenancy Bill, 1883.

I do not propose to enter into any general discussion as to the relations of landlord and tenants in this country, or to consider the necessity for introducing so drastic a measure as the present one. I simply propose to deal with the Bill as one that, with more or less modification, will certainly be passed next year, and to criticise the principal points in which the Bill seems to me advantageous or objectionable.

Section 21, sub-section 4.—This sub-section appears to press unfairly on the landlord. Surely in no conceivable case could it be fair that the whole net profits of a tenure, of which even the whole was unreclaimed when the tenure was created, should be perpetually enjoyed by the tenant. Surely the landlord, who owned the land before it was reclaimed, is entitled to something for the use of what I may call the raw material on which the tenant has operated his reclamation. For the words "whether it exceeds 30 per cent. thereof or not," I would substitute the words "not exceeding 70 per cent. thereof."

Sub-section 5.—The same objection, I think, applies to this sub-section. A tenure-holder who has made improvements is entitled, first, to the same amount of profit as if he had not made improvements, *i.e.*, not less than 10 per cent. and not more than 30 per cent. Then to a fair profit on his outlay by a fair profit on the outlay, I mean not merely the market rate of interest on the capital laid out only, but a profit which takes into consideration the increase of wealth won from the soil by the application of capital.

Thus, for instance, if by the application of £100 the produce of any quantity of land is raised from, say, £30 to £60, I consider a fair profit for that improvement to be not merely 5 per cent. or 10 per cent. on the £100, but a fair share of the increment, say roughly three-fourths. But the landlord is surely entitled to something for the "raw material" he supplies.

In this section, after the words "any share," I would therefore add "not exceeding 75 per cent. and not less than 10 per cent. of the balance mentioned in sub-section 3."

Section 24, cp. section 78.—I think this a most excellent rule; it deprives zemindars of the power of harassing their under-tenants by incessant litigation.

Section 49.—I think that this section is open to very serious objection. I am aware that it is founded on certain rulings which, although they may have correctly interpreted the law, have always appeared to me objectionable. The present section will affirm and consolidate these rulings. It will be a great disadvantage to the landlords, especially to small landlords in the Behar districts. I have known in these districts many small proprietors whose sole wealth was their *khamar*. I have always understood *khamar* land to be land which was admitted to be the peculium of the zemindar, and which he had every right to dispose of to the very best advantage that the state of the market allowed him to do. I do not think that we need be apprehensive that he will now-a-days be able to do more than this.

I quite accept it as a thing politically desirable (if economically unjust) that landlords should not be allowed further to increase their *khamar* lands, but I think that established *khamar* should not be interfered with, and that the tenants of *khamar* lands should not be permitted through the carelessness or ignorance of their landlords to acquire a right in this valuable peculium to the detriment of the landlord.

Section 50.—Does this mean simply that he may sublet a portion of his land, remaining liable to the landlord for the rent assessed on the whole, or he may at his option apportion his liability to his landlord? If the latter, I think it is a provision obviously unfair to the landlord

Section 56, Statement of Objects and Reasons, page 116.—After some fluctuation of opinion, I believe that this is a highly desirable provision. At first I was inclined to regard it as injurious to the ryot and likely to diminish the value of his occupancy right. I may say that, so far as the incoming tenants were isolated strangers, immigrants, or persons previously entirely unconnected with the land, I think that no great harm would accrue from their being assessed at the highest rate of rent which the landlord could obtain. Again, I do not believe it would be possible even for a very great zemindar to eject large bodies of his old ryots and supply their places with immigrants, or, what would amount to the same, to deport a whole body of cultivators from one village to another village within his estates. But I think it would be quite possible for him to take advantage of the needs or misfortunes of his tenants, and thus buy up their occupancy rights. Without some absolute restriction like the present, no legislative ingenuity would be sufficient to prevent his resettling the old tenants *swanami* or *benami* on the old lands at arbitrary rents. This is in fact often done now on small scale, and if done on large one would be a great political evil; therefore, I accept this as a salutary restriction.

Section 77.—I am inclined to think five years too long a period; it is rather an incentive to indolance and unthrift. Two years would be, I think, quite a sufficient time to allow. In the case of tenure-holders it is rather different. At tenure-holder finding his rent, say, doubled before he had time to increase the rents of his ryots, might be put to great inconvenience. A cultivating ryot, on the other hand, has only to work a little harder.

Section 85.—I accept entirely the principle of section 85, and the reasons given for it at page 121 of the Statement of Objects and Reasons, but I think such a right should be only co-extensive with the necessity. I would therefore so modify paragraph 2, so as to make it plain that although an agriculturist did not lose his right in his *bastu* land simply by ceasing to become a settled ryot, yet he did lose it by ceasing to be an agriculturist at all. A ryot should not be able to sell all his *arable* lands and entirely abandon the occupation of husbandry, and still retain a permanent heritable and transferable right in his *bastu* in an agricultural village.

Section 93.—I think that this section is distinctly open to objection, as I believe it will make the exercise of the landlord's power to eject an ordinary ryot quite nugatory. I do not believe that, as a matter of fact, such a ryot would ever make any improvements for the cost of which he could not recoup himself within a year or two at the outside, but the existence of the section would enable him to raise all sorts of claims which must naturally be investigated, and which although, I believe, they would usually be unfounded, would still enable the ryot to harass the landlord and protract the litigation until the time for letting the holding would be passed, and the landlord would either be compelled to allow the old ryot to remain in possession, or would have the tenure thrown in his hands for a year without a tenant. I would make an exception in the case of the ryot having built ryot's ordinary dwelling-house, which any ryot should, I think, be entitled to make, and for which, if ejected, he should be entitled to compensation. I think also that, although a tenant is fairly entitled to some small compensation for disturbance, ten times the increased rent would be excessive. I suggest three times the increased rent as a fairer rate.

Section 97.—I would go further than this section, and would make the rent payable in any local area on such dates and in such instalments as the Board of Revenue may appoint, saving only written contracts. It is a very common device for zemindars to harass their tenants to demand payment of rent in monthly kists, and in such cases I have always found it very difficult to ascertain what dates were customary, or in absence of any writing what dates had been agreed to by the parties.

Section 103, Clause c.—I feel very doubtful whether it is advisable to introduce a section like this into a Rent Act. I am inclined to think it will be very difficult to ascertain whether the ryot's doubts are *bonâ fide*, and as suitors in this country are always on the look-out for opportunities for tentative litigation, I fear that whenever there is disputes going on between different persons claiming lands as landlords that the ryots will be induced by one or other of the claimants to make deposits solely with the object of getting, if possible, a decision which will force the opposite side to go into Court as a plaintiff. If it were thought necessary to give the ryot this protection, I think it would be better to allow him to make such a deposit, simply stating the names of the claimants who should then be called on to interplead one another, and this deposit should have the effect of dismissing the ryot from the suit and protecting him against any further liability up to the amount of the sum deposited. In such a case zemindars could have little temptation to practice with ryots to make tentative deposits

Section 128, Clause 2.—I do not think that an ordinary ryot should be allowed to make improvements against the wishes of the zemindar except to the extent of building a house. An ordinary ryot has, it appears to me, no right in the land except what the landlord chooses to grant, and in the case of the very small area in the settled districts of the Lower Provinces, wherein occupancy rights have not been acquired, I think the landlords ought to be able to select their tenants and limit their rights. Presumably such tenants will be strangers and not settled ryots of the zemindari (whose status is entitled to every respect), and I do not see they have any particular claim to consideration. If an ordinary ryot having a little capital is permitted to make improvements against the wishes of his zemindar, he might easily, as soon as he has entered on the land, make such improvements as would make it impossible for the landlord to eject him. At the same time I do not think landlords should be encouraged to refuse such sanction merely from caprice. If an ordinary ryot desired to make improvements against the will of the landlord, I think that he should be allowed to serve a notice on his landlord, and that, if the landlord refused him consent, it should operate at the option of the ryot as a permission to abandon the holding at once. In the case of this class of tenants only, I would save any written engagements by the tenant at the time of entry not to make improvements against the will of the landlord.

Section 141.—I should prefer to see the presumption reversed. It is seldom that it is to the interest of a landlord that a tenure should merge. I think the presumption should be that the tenure does not merge unless the contrary is shewn.

CHAPTER XIII.

I confess I should have been glad to see the power of distraint entirely abolished. I am convinced, however, it that would be unjust to the landlords to do so at present. My experience is that it is a power very greatly abused. At the same time I admit, when Collector and Manager of Wards' estates under Act XL of 1858, having had experience of villages, from which I could never realize my rents except by distraint. This was of course before Act VIII of 1869 (B. C.) came into force.

Section 202.—This section does not provide for cases in which the breach or damage cannot be compensated by a money payment. I would add after the words "breach" always provided it can be compensated by a payment in money.

The above are, I think, the only sections in the Act which strike me as objectionable or calculated to press unfairly on the landlord. The new Bill no doubt effects a considerable change in the relations of landlord and tenant, but in my opinion that change will be a beneficial one, and a change which, without unduly curtailing the rights of the landlord, will tend to raise and strengthen those whose interests it is the duty and the truest policy of our Government to cherish—the mass of the common people.

No. 571, dated Commillah, the 12th May 1883.

From—R. TOWERS, Esq., District Judge of Tipperah,

To—The Registrar of the High Court of Judicature at Fort William in Bengal.

In reply to your letter No. 1157J, dated 23rd ultimo, I have the honour to submit the following remarks on the new Rent Bill.

2. The measure is no doubt an extremely able one, and shews a thorough grasp of all the vexed questions arising between the conflicting parties whose interests will be affected by it. It is clear, however, that it is conceived more in the interest of the tenant than of the landlord, and while the latter gains very little from it, the tenant on the other hand acquires substantial advantages at the landlord's expense, which in many cases exceed the tenants' demands, which are entirely novel in their character, and which appear to be derived rather from a consideration of what has been found expedient in foreign countries than from Indian law or custom.

3. Amongst these I would class (1) the easy terms on which occupancy rights are conferred; (2) the confiscation of the landlord's rights to deal as he chooses with land that has once been *ryoti* when it reverts to his private possession; (3) the almost entire abolition of the right of private contract between parties; (4) compensation for disturbance; (5) the power given to ryots to make improvements against the landlord's wish. I do not wish to be understood as meaning that many of these innovations (within proper limits) may not be justified, but they are one-sided in their character, and the other side is not compensated by any corresponding advantages. I admit the difficulty of conceding to the zemindar his main demand, greater facility in realization of his dues, but I am not prepared to say that it could not be satisfied to a certain extent. There is, however, hardly any attempt made to do so in the Bill.

4. The next general observation which occurs to me is that litigation will be enormously fostered by the Bill. The parties are driven into Court or before the Revenue authorities at every step; even where a ryot agrees to the addition of a few annas to his *jumma*, he cannot register his contract unless with the approval of a public officer. Transfer of occupancy rights will be almost entirely effected through the Courts: so will registration of transferable tenures. Preparation of tables of rates and produce, and records of rights (extremely desirable objects, no doubt), will require a large and expensive staff of officers, and the decision of claims for compensation, for disturbance and improvements will add largely to the business of the Courts. These are not all the provisions of the Bill which will increase litigation, and Government will have to make up its mind to a large addition to the number of Munsiffs and Subordinate Judges to deal with the new work that will be thus thrown on these already overburdened officers.

5. Then not a few of the provisions of the Bill seem unsuited to practical working. Among these I would instance the procedure regulating the transfer of occupancy rights, sections 51-5; the rules for the preparation of tables of rates, sections 62 *et seq*; those directing apportionment of expenses, section 72; rules for enhancement, sections 78-6, which seem very intricate. Those requiring delivery of a statement of account, section 101, chapter XI, which renders nearly all the labour and expense of the proceedings before the Revenue Officer liable to go for nothing, if either party chooses to resort to the Civil Court.

6. That there are many admissible provisions in it, I do not for a moment mean to deny. I have not in my remarks in detail referred to these, but when I pass them over, I mean it to be generally understood that I approve or do not object to them. Among others I would particularly mention sections 98, 100, 122, 125, 142, 148, 150, chapter XIII generally, 199, 200, 203 (*a*), 204, 205-7.

7. I now come to the details of the Bill.

CHAPTER II.

I think the expression "private" land is too vague and will give rise to difficulty. There is a good deal of land even in the eastern districts, which the proprietors let out for yearly cultivation, sometimes to one tenant, sometimes to another, in which no right of occupancy is ever claimed by the cultivator. Will this be considered *khamar*? I think it will be a hardship on the landlord if it is held to be *ryoti* within the meaning of the Bill. The survey and register under section 7 will, I believe, be a work of enormous difficulty. Every plot will be disputed, and there will be in effect a civil suit contested in every stage before the Survey Officer, the Commissioner, the Board, and Government.

It seems to me to be more expedient to allow each case to be settled by the Courts on its own merits in case of dispute, than to cause widespread discord by sending a roving commission about the country to agitate questions on which the parties concerned are themselves

quiescent. I believe there is no injustice felt in this part of the country, at all events, on this subject (whatever may be the case in Behar).

CHAPTER V.

The two chief points open to criticism in this chapter seem to be (1) the definition of occupancy rights in sections 45 and 47 ; (2) the provision in section 56 that any ryot taking land from a landlord, of which the latter has himself acquired the occupancy right, shall have a right of occupancy in it.

With regard to the first of these, the extreme care has been put that under the Bill a ryot who has held two *cottahs* of land in village A for 12 years, may acquire rights of occupancy in 200 bigahs in villages B, C, and D, though he may have had possession of the same land for only three or four months. The necessity of the provision has been maintained, on the ground that otherwise the landlord, by shifting the ryot from one plot to another, might prevent the acquirement of the right in any one plot. There may be parts of the country where this is done, but I do not believe in the existence of the practice in Bengal. It may be difficult to give a difinition of occupancy rights which would satisfy everybody, but I think the proposed one must be modified. If the landlord could shew that it was at the ryot's own request that he allowed him to change his land, I think possession of the land subsequently acquired ought not to count in continuation of the former holding. If the holding is made up of lands taken at different periods, only in those held for 12 years should the right be deemedto accrue. The burden of shewing the different periods and the area taken up at reach might be placed on the landlord, as matters peculiarly within his knowledge. If he keeps proper *jumma-wasil-baki* papers, he should have no difficulty in proving the particulars. The payment of rent is not made a condition to the retention of occupancy rights, which is a material departure from section 6, Act VII of 1869 (B.C). It was held in Narayan Roy *versus* Upiul Misser, 11 C. L. R. 417, that payment of rent is not necessary to the *acquirement* of such rights, but the Bill goes further still. The provisions against contract in sections 45 and 47 may be justifiable in some parts of the country. As a rule, I believe the ryots in the eastern districts are well able to take care of themselves in this respect, and they have the great safeguard of the Registration Land Act (III of 1877) in their favour. There need be little fear of ryots being entrapped into signing *kabulyats*, so long as the registration of *kabulyats** is compulsory. Should there not be an addition to section 50(*d*), allowing a decree for ejectment on the ground of forfeiture, *i.e.*, when the ryot repudiates his landlord's title and sets up an adverse one? *Vide* Article 12, clause 8 of Mr. Field's Digest.

* I Know that *kabulyats* for one year are not compulsorily registerable, but they ought to be made so. The omission has been a fruitful cause of fraud.

I have received some strong representations as to the delay which will be caused to the landlord, by his not being allowed to eject an occupancy ryot for arrears of rent, his remedy under the Bill being the sale of the holding. This is one of the points where the zemindars asking for bread (*i.e.*, greater facility of realization) have been given a stone. But I think the arguments in favour of transferability are unanswerable, and it follows that sale of the holding and not ejectment is the proper remedy ; even at present it has been held that if a ryot has a transferable interest in his *jote*, he cannot be ejected for non-payment of rent. *Vide* Kristendra Roy Chowdhry *versus* Aina Bewa, 10 C. L. R. 399.

Then with regard to section 56, except in cases of ejectment, section 56 (*d*), and lapse, section 59 (*g*), the only way in which the landlord can acquire the right is by purchase (the two exceptions will evidently be of very rare occurrence). But if he is compelled to treat any person to whom he subsequently lets the land as an occupancy ryot, what consideration has he had for his purchase money? It is said that he may keep the land in his own hands, and cultivate it by labourers or hired servants. But in many cases it might be extremely inconvenient for him to do so. It would require an amount of capital which he frequently would not possess, and even if he did, his tastes and habits might not lie in the direction of practical farming.

In my opinion there is an economic mistake, as well as a serious injustice, in the provisions of this section. I see no reason why land thus acquired should not be considered as the "private" land of the proprietor, the danger stated in the "Objects and Reasons," paragraph 42, seems only imaginary; the new ryots would come in with their eyes open, and even ordinary ryots are substantially protected by the Bill.

CHAPTER VI.

Sections 58-61.—Here again, I think, there is too much interference with private contract, and I think section 61, at all events, is not defensible. Why should a settled ryot, who wishes to take on more land than that in respect of which he has acquired his *status*, be allowed to hold any further land he may take from the zemindar on privileged terms? Of course the section is the natural outcome of the hard-and-fast distinction of all land into *ryoti* and *khamar*, but, as I have already said, it seems to me unjust that a landlord should not be permitted to turn *ryoti* into *khamar* if he has obtained the *ryoti* right to it by legitimate means. The preparation of a table of rates will be practically impossible in most places, the rates varying so much even in comparatively restricted areas.

Section 78.—The period of 10 years laid down in this seems too short. Any change ought, I think, to be absolutely prohibited for at least 20 years.

Section 79.—There ought to be a ground added to this section allowing the ryot to claim a reduction on the converse of the ground stated in section 74 (1), *viz.*, that the rent paid by him is above the prevailing rate payable by ryots of the same class for similar lands in the vicinity.

CHAPTER VII.

Under section 88 it is not clear but that an absconding ryot, *i. e.* one who has abandoned his cultivation in the village and gone elsewhere, may not still for an indefinite period retain his right to the hut which he has erected on his holding, and which has ceased to be of any use to himself or to any one else when he has abandoned it. Right to the *bastu* ought not to survive rights to the cultivable land when the latter is abandoned.

Section 90.—Ejectment for forfeiture should be allowed; *vide* note to section 50 (*d*).

CHAPTER VIII.

The provisions of this chapter are entirely novel, and most of them seem to me to furnish very reasonable ground of complaint to the landlord. The limit to the amount of rent demandable under section 89 (read with section 119) seems very low, and I question whether the law should fix any limit.

Section 90 (b)—Pre-supposes that there will be a written contract, which in most instances will not be the case, and compensation for disturbance imposes a penalty on the landlord for exercising an admitted right. With regard to compensation for improvements, there will, as a rule, be no improvements in Bengal, except the ryot's hut or homestead, which, though dignified with the name of an "improvement" in section 126, is a very questionable one from the landlord's point of view. It is not as if the ryot built a substantial farmhouse and out-houses as in Europe, which would be of use to an incoming tenant; it will consist only of a list of thatch and fencing and a *bhita* which the next comer will probably prefer not to take over at all, but to raise a new one for himself. Still the owner is entitled to something for it, and this provision is therefore, I think, equitable enough. If the principle of compensation for disturbance be retained, I think it should only be allowed where the Court considers the enhanced rent demanded to be grossly unreasonable.

Section 91.—It has been suggested, I think very reasonably, that it should be declared that failure to prove service of the notice should not cause the suit to be dismissed. The service or non-service might be taken into consideration in determining the question of costs, or the time from which the enhancement should commence.

CHAPTER IX.

Section 96.—Alteration of rent on account of excess or diminished area *ascertained by measurement* seems to be left out of the Bill. Sections 18 and 19, Act VIII of 1869, specified them as grounds of enhancement and abatement. I do not know whether their omission from the Bill is intentional. I find no explanation of this in the "Objects and Reasons."

I would omit section 101 as tending to unnecessary trouble and complication. If the ryot gets the receipt specified in section 100, he cannot want anything more. The particulars required by section 101 seem to correspond very much with those contained in the ordinary *jumma-wasil-baki* papers, which the zemindar will probably keep for his own convenience; but if the ryot gets the receipt to which he is entitled by the preceding section, he should not be allowed to harass his landlord by putting him to the expense of an extra establishment for furnishing "extracts of account," and subjecting him to prosecution for neglect to do so. This section will operate as a real hardship on zemindars, with no corresponding advantage to the ryot.

Section 102—My experience in rent suits has led me to the conclusion that there is nothing more important to the interests of the ryot (and indeed of the landlord too, though he does not always think so) than a proper system of receipts. The form in section 100 seems an admirable one, and the retention of the amount of *jumma* (clause *f*) should be insisted* on. I am sure I am within the mark when I say that three-fourths of the cases I have had to deal with in this district, between landlord and tenant, arise from dispute as to the amount of *jumma* in each case payable. Pottahs and *kabulyats* being unfortunately as yet comparatively rare, there is nothing to decide the point, but unsatisfactory oral evidence and such confirmation thereof as may be found in the zemindar's papers. The introduction of clause *f* will be a great boon to the ryots, and, considering the importance of it, I would make the punishment of the landlord much more severe than that laid down in section 102, which seems to me entirely inadequate. In most cases it will not be worth a ryot's while to put himself to the trouble of prosecuting for such a petty sum as double the few annas for which a receipt has been withheld. We may be sure that the costs he would obtain in the suit, even if he won it, would not reimburse him. The force of these remarks will be more evident if we bear in mind the exceedingly small *jummas* of most of the ryots; six millions out of 10 paying less than 5 a year—*vide* Mr. Justice Cunningham's minute. I would make the withholding a receipt for

* NOTE.—*I* would modify this by adding "in the case of settled ryots." It has been pointed out to me that in some yearly lettings called *ulhapara* in this part of the country, corresponding, I believe, with the *uttandi* in Nuddea, the rent depending on the area found on measurement to have been cultivated by the ryot, it is not usual for the landlord to prepare his jummabundi till late in the year. Payments will, however, have been made before that by the ryot, and in receipts given for such, it will not be practicable to enter the amount of the jumma.

any sum a high misdemeanor, punishable with fine extending to (say) Rs. 500, out of which the ryot should be reimbursed full costs of suit besides penalty.

Section 125.—There is no provision in the Bill corresponding to sections 57, 61, 64, and 65 of Act VIII of 1869. It ought to be distinctly laid down whether, in the case of arrears of tenure, the landlord's remedy is to be confined solely to the sale of the tenure, or whether he can also proceed against other property of his debtor, and if so, whether before or after sale of the tenure. In this connection, I would call attention to a recent important ruling of the High Court, I. L. R. VII, Calcutta, 748, which certainly interprets the law differently from the way in which it had been previously understood. The omission of all reference to the subject in the Bill may give cause to much difficulty, and there ought, I think, to be an authoritative exposition of the law on it.

CHAPTER X.

Sections 126-8.—I doubt whether either party will make much use of these sections. I must say that the provisions generally of the Bill hold out but little inducement to the landlord to make improvements (which others will reap all the benefit of), but the principle contained in these sections is undoubtedly novel. They may be beneficial, but they upset existing ideas. Permission to dig a well or excavate a tank has hitherto been held a high prerogative of the landlord. There will no doubt be loud complaints on this point. The principle is objectionable, chiefly, I think, because it confers a right on the ryots which they would never have thought of claiming themselves, and I think reforms in this direction should only be where the people themselves demand them.

Section 129.—I do not know whether the word "predecessor" in clause 1 is designedly in the singular number if it includes the plural, as it may, by section 2, Act I of 1868, I think. Some limit of time within which the improvement must have been made should be laid down.

Section 133, proviso.—In cases of increase or loss to his property by alluvion or deluvion, it might be a hardship to prohibit the landlord from measuring again within 10 years.

CHAPTER XI.

This chapter is intended to apply to *all* classes of ryots. I would, for reasons already given, exclude ordinary ryots from its operation. I think Government should not interfere with the zemindar's power of contracting with them on any such terms as may be mutually agreed on.

I confess I do not quite understand the distinction between rents subject to alteration by order of a Court and rents not subject to such alteration. Will the Revenue Officer have the power of deciding what tenants' rents fall within each class? His decisions in the latter class of cases will have little finality, their correctness being merely presumed until anybody shows the contrary in a civil suit. Litigation will therefore be hardly, if at all, prevented in this class of cases.

In the other class he should either not interfere at all, or his powers should be more extensive. It may be right that he should have a discretion to refer cases to the Civil Court under section 155, but I think the powers of revision given to the latter by section 160 are much too large. The matters referred to in clauses (*a*), (*b*) and (*c*) are surely ones in which the Revenue Officer, who it is to be presumed will visit the spot, measure the ground, &c., will be in a better position to decide than the Civil Court. The period of 10 years in section 160 should be extended to 20. It is of the utmost importance that people should not be harassed by liability to frequent change in these matters.

CHAPTER XIII.

I am not one of those who would recommend the abolition of distraint. It is in many cases, even in Bengal, absolutely necessary to the legimate security of the landlord, who ought to have a first charge on the produce of the land. I have observed in the printed reports of discussions in Council and elsewhere that very little objection has been taken on any side to the provisions of this chapter. Two of them seem absolutely necessary to be maintained.—(1) That the landlord must not himself be allowed to interfere in any way with the distraint (except in applying to the Court for it), wich must be entirely carried out by the Court's officers. (2) The penal provisions of sections 185-6 which are necessary to give effect to the former principle.

In section 167 (2), I think the court-fee should be eight annas only. That specified is too high a tax on the landlord. He has not yet the benefit of a full adjudication of his claim, as he may afterwards have to defend a suit under section 181 (4).

CHAPTER XIV.

The arguments against furnishing zemidars with any summary remedies for the recovery of arrears rent are certainly difficult to be answered. Chapter XIV simplifies the existing procedure a little, and section 199 is no doubt a wholesome provision; but still the fact remains that numbers of ryots withhold their rents with no excuse whatever, and Chapter XIV will not have much effect on them. They simply decline to pay until they are forced, and I have heard it explained how it pays them to do so. The first thing is that they gain time. They know there will be a good deal of delay before the landlord can get his

case ready for Court, and after the plaint is filed, they know there will be a good deal of further delay before they are called on to appear, and still more before the case is decided, especially as the Rent Munsif's files are so heavily blocked (I am of course now speaking of this district only). There then will be the time taken in appeal, and finally the chance of a successful claim by a friendly neighbour to the property attached in execution. The above proceedings may be easily spun out for a year, and frequently longer even in cases where there is absolutely no defence; and I am afraid that even under Chapter XIV the delay will not be much curtailed. The danger of allowing zemindars the summary powers exercised by the Collector in *khas mehals*, &c., under the certificate system, has of course been amply demonstrated. There is one suggestion, however, which I would make bold to offer, *viz.*, that in any suit where the zemindar produced a decree shewing that the *jumma* claimed by him had been awarded by the Court against the defendant within (say) three years of suit, with a declaration on oath that it had since been due and unpaid, and submitted his *jumma-wasil-baki* or similar papers to the Court's inspection as proof thereof, a decree for the amount should forthwith be passed, subject to the condition that execution be at once taken out, the defendant to be heard summarily on any objection made by him. Something like this would, I believe, work well in this district; the only defence would in nine cases out of ten be a plea of payment, which, under the now stringent rules as to accounts and receipts, ought to be settled at once without difficulty. There should be no appeal by the defendant unless he paid the amount decreed into Court.

Section 196.—Evidence should be taken down *verbatim* whether an appeal is allowed. If this section stands, Appellate Court will be placed in a very difficult position, somewhat as they are at present, in appeals in summary trials under the Criminal Procedure, where, on the meagre depositions on the record, it is often impossible to say whether the first Court was right or wrong Abbreviation of the evidence will be no help, but the contrary, to the Appellate Court. If the section stands, I am sure there will be many remands on this score.

Section 198.—It is probably thought that the limitation of power to appeal is a provision which will operate chiefly in favour of the zemindars. My experience does not lead me to that conclusion. The Court of first instance (by which I, of course, mean the Munsif's principally), according to my experince, favour the ryots as a class more than the zemindars. Restrictions on the power to appeal would, I believe, be felt as a greater hardship, therefore, by the latter than by the former. The provisions in section 198 (*a*) seem unimpeachable. I almost think (*b*) would be better omitted. A Munsif so vested would be under great temptation to become either a "zemindar's man" or a "ryot's man," and the District Judges work would be enormously increased by the last proviso of the section, which would be sure to be worked so as to give him as much trouble as if there was an appeal in every case.

Section 200.—Nor would I allow a landlord to sell his right to the rents to any one but his successor in interest as landlord. Temporary tenure-holders, such as *ijaradars* and *durijaradars* for short terms, often sell to speculators their rights to the rents from the ryots for one, two or three years. This should I think be prohibited. Chapter VIII of the Transfer of Property Act seems to sanction the practice, but does not give adequate protection to the ryot.

CHAPTER XVI.

I would draw attention to the note in Mr. Field's Digest, pp. 56-7. It may be, if *exclusio mimi is expressio alterius*, that section 225 may be held to mean that, with the exception of sections 7, 8 and 9 of the Limitaiton Act, the provisions of that Act generally apply to suits, &c., under the Bill. If so, there will be no difficulty, otherwise there ought to be an express declaration to that effect. It seems doubtful, however, whether it would be expedient to extend the provisions of the Limitation Act generally to suits, &c., under the Bill. Some sections of the Act no doubt ought to be so extended, such as section 5, paragraph 1, sections 12, 17, 18, 22 and 25. There are others which are more doubtful, *viz.* section 5, paragraph 2, which is opposed to section 103, Act VIII of 1869 (B.C.), and perhaps section 14.

SCHEDULE III.

There is such a remarkable unanimity amongst all those whom I have consulted on the necessity for the insertion of some provision to protect putnidars from exactions on the part of zemindars (or rather of their servants), that I have thought proper to notice the matter, though I myself thought section 14, clause 1, sufficiently provided for it. I have, however, been assured that the Collector does not consider himself at liberty to receive amounts tendered under that section, but refers the parties to the zemindar's amla, who invariably refuse to receive it, and stop the sale, except on receipt of a gratuity amounting sometimes to so much as 10 per cent. on the deposit

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No. 450, dated Bankoora, the 16th May 1883.

From—Baboo Brajendra Coomar Seal, District Judge of Bankoora,

To—The Registrar of the High Court of Judicature, Calcutta.

With reference to your No. 1157 J. of the 23rd ultimo, calling for an expression of opinion on the provisions of the Rent Bill, I have the honour to submit as follows.

2 The Bill is in some respects an improvement on the Bill drafted by the Rent Commission; and, generally speaking, I approve its provisions

3 On going through the Bill, what has suggested itself to me I proceed to note for the consideration of the Court

CHAPTER I

4 *Section 3, clause (3), Tenure*—Ryots of the class described in section 14 ought not to be brought under the category of tenure holders Paragraph 13 of the Statement of Objects and Reasons explains that it is necessary to call them tenure holders simply because it is convenient to do so from the draftsman's point of view, but in course of time the ground on which they have been called tenure-holders would be lost sight of, and they themselves would lose the privileges of a ryot

5 *Section 5, clause (10)*.—Perhaps it would be better to put it in the following form "Rent" means whatever is payable in money or deliverable in kind, &c

6 *Section 5 clause (15)*—The definition, as contained in the Rent Commission Bill I consider to be better

7. Each of the members of a joint-family, consisting of five brothers, may rent a farm with respect to his undivided fifth share in my land In such a case it would be doubtful whether the *holding* under each of the brothers would come under the definition of the *holding* as given in the Bill The words "*a parcel of land*" are objectionable

CHAPTER II

8 *Section 6*—The presumption contained in the latter part of this section, if allowed to remain, is likely to create difficulty Thus A ryot, sued to recover possession of land saying that it is his *nankar* land, the landlord contends it is *khamar* A, as plaintiff, ought to start the case He would be able to prove that it is not *khamar* by producing an extract from the papers relating to the measurement provided for by the Act as well as the landlord would. Under such circumstances, it would hardly be fair to call upon the defendant in the first instance to disprove the case set forth in the plaint.

9 *Section 7*—Opportunity may now be taken of making provision for the registry of tenures and the occupancy ryot's holdings, on the line of the Land Registration Act (Act VII of 1876) Every sub-divisional office ought to have a register of all tenures within its jurisdiction, and every Munsif's office a register of the holdings of all settled ryots in the same way as the District Collector has in his office a register of all revenue-paying and revenue free properties

CHAPTER III

10 *Sections 16 and 17*—These sections ought to come under section 15 as Explanation I and Explanation II, respectively That was the position accorded to them by the Rent Commission

11 *Section 25*—It ought to be made clear that the permanent tenure is also *heritable*

12 *Section 27, sub-section 2, clause (b)*—The fee provided for by this section seems to be high. It will be sufficient if it is made double of what is laid down in clause (*a*)

13 *Section 27, sub section (3)*—Some provision ought to be made when the landlord refuses to give his reasons in writing

14 *Sections 28 and 32*—Instead of Revenue Officer, I would prefer Civil Court, at any rate, a wider latitude may be left for the Local Government by substituting the simple word *Officer* for *Revenue Officer*

15 Throughout the Bill it is provided that a man should first go to the Revenue Court and then to the Civil Court. This procedure will not only be expensive, but also inconvenient The best course would be at once to go to the court where he will get the final relief I say inconvenient, because the limits of the sub-divisional jurisdiction are oftentimes more expensive than those of the Munsifs, and therefore the sub-divisional offices are not as easily accessible to the people as the Munsifs are

16. *Section 29*.—This section will clash with section 312 of the Civil Procedure Code It will perhaps be better to leave the auction purchaser to follow the course laid down for a private purchaser. That will be reasonable, and it will at the same time secure uniformity of practice.

17 *Section 30*.—There ought to be an application to serve the purpose of a reminder, otherwise mistake is likely to occur in the case of owners of extensive properties like the Maharajah of Durbhunga or the Maharajah of Burdwan. It will be more business-like to make it incumbent on the purchaser to make an application, but without fee.

18 *Section 31*—Instead of jointly *and* severally, it would, I think, be better to say jointly *or* severally. When two persons are jointly *and* severally liable, both of them must be sued, and the decree may be joint and several, but it is doubtful whether the one or the other may be sued separately. My object in proposing *or* for *and* is to leave it open to the landlord to sue both or either. If the phrase "jointly *and* severally" would not stand in the way of a suit being brought against either the one or against the other, or against both, I have no objection to allow the section to stand as it is.

19. *Section 44*.—By custom, having the force of law, the phrase "*having the force of law*" has been used either as expletive or as definitive. If it has been used as an expletive, it is liable to be mistaken for a definitive phrase. If it has been used as definitive, it will create

difficulty in practice. I think it is better to omit the phrase, leaving simply the word "custom"—custom, to be valid in law, has its well-known incidents.

20. *Section 45, Notwithstanding any contract to the contrary.*—At one time I was of opinion that laws ought not to interfere with contracts, but I now think that without such a provision the object of the law is liable to be defeated. I therefore approve the section as it is.

21. *Section 46.*—One year seems to be too short a period. In anology to the limitation in cases of prescription, I would make it two years. Then "*ceasing to hold ryoti land as a ryot*" ought to be explained or illustrated, otherwise difficulties will arise in practice. When the ryot does not cultivate, but continues to pay rent, will he be considered to have ceased to hold as ryot?

22. The period of one year, or whatever the term may be, must be *continuous*. It is therefore desirable to add the word *continuous* before "period."

23. The Bill protects two classes of ryots, *viz.*, (1) ryots who have held lands in a village for a period of twelve years, though it may not be the same land, and (2) ryots to whom occupancy right has been granted by deed; but it gives no protection to a class of ryots who are, as a matter of fact, looked upon as superior in rank to many coming under the first class, *e.g.*, a tenant who has for twelve years held different lands of the same village as a *bhag* tenant, he will obtain the rights of an occupancy tenant; but one who has resided in the village for eleven years and cultivated the land of that village for eleven years, and has given ample proof that he intends to live permanently in the village, is not protected. The custom under section 4 would not help him, because, since the passing of Act X of 1859, there has been an interruption of the custom which protected *khudkasht* ryots, and one of the incidents of custom is that it must be uninterrupted. He may no doubt acquire the rights of an occupancy tenant by deed under section 48, but landlords are not likely to favour such grants.

24. I would be satisfied if a section were inserted between section 48 and section 49, to to say that, when a ryot cultivates the land of a village and lives there, and intends to live there permanently, he will also be considered settled tenant, with the right of occupancy, notwithstanding any contract to the contrary.

25. *Section 49.—Under a lease for a fixed period.*—A holds *khanar* land without any engagement for five years. After the expiration of the five years, he takes a lease of the land for a fixed period of thirteen years. Here, when the lease has run for seven years, A shall have held the land for a period of twelve years. He would not, under the section as it stands at present, acquire the right of occupancy, because he has held it for a portion of twelve years under a lease for a fixed period. The section ought to be made more clear, so as not to lead to such a conclusion.

26. *Section 50.*—I approve the rights proposed to be given to occupancy tenants. At one time I held that, to keep the ryots at a safe distance from the mahajuns, it would be wiser to make the interest of an occupancy ryot not mortgageable. I give up that idea and accept the incidents as they are laid down in this section. I object only to the proviso to clause (*g*) as being unwise and unstatesmanlike. The words "proprietor of the soil" in the Regulations of 1793 have given rise to a good deal of misconception. This proviso, which virtually makes the landlords represent the Crown in certain respects, is likely to give rise to further misconception in future. The practice, as it obtains at present, is that the Crown does not exercise its right by escheat with respect to *mal* land; that practice may be continued, and it will serve the purpose of the said proviso.

27. *Section 50, sub section (1).*—Instead of the *Office of the Collector*, I would substitute *Civil Court*, as ultimately he shall under sub-section (3) have to come to the Civil Court. To go from one office to another for a matter like that would cause delay and trouble. The matter ought at once to be settled by the Civil Court.

28. Instead of *one month from the date on which he files the notice* in sub-sections 1 and 3, I would make it 15 days from the date of the service of notice, making it discretionary with the Courts to extend the period on satisfactory grounds.

29. *Sub-section (4).—Within six months from the date of sale.*—The period of the limitation ought to be the same as that fixed for cases of pre-emption (Article 10, Schedule II of the Limitation Act), *viz.* one year.

30. *At a price ten per centum below its estimated value.*—This is a very wise provision and I support it. It will serve as a self-adjusting safety-valve.

31. *Section 54, sub-section (1).*—For the office of the Collector I would make Civil Court.

32. *Sub-section (3).*—For *one month from the date on which the notice is filed*, I would make *fifteen days from the date of the service of notice.*

33. *Sub-section (4).*—For 'within six months,' I would propose one year.

34. *Section 55.—Claim to purchase from the legatee or any other person, &c.*—Exception ought to be made in cases where the tenant, with a desire that the property should remain in his family, bequeaths it to his widowed sonless daughter, or widowed daughter-in-law, who, though not heiress-at-law, are still the objects of his affection, and whom he looks upon as members of his family.

35. *Section 59, sub-section (1), Chapter VI.—"Approved of, and registered by, a Revenue Officer appointed by the Local Government in this behalf."*—The plan is not likely to work

satisfactorily if the section stands as it is. I would modify it thus: "Approved by the Court in which a suit for the enhancement would lie, and registered under the Registration law after approval."

36. *Sub-section* (2.)—The standard is perhaps low; it may be raised to eight annas, one-fourth of the estimated average annual value of the produce respectively.

37. *Section 61, sub-sections* (1) and (2.)—I would omit both these sections. So much interference is not necessary.

38. *Section 62.*—The greatest care is necessary to prepare the table of rates, and the local area taken must be limited in extent. A table of rate made without due care and circumspection, and for large areas, is likely to do more mischief than good. The preparation of the table of rates ought to be entrusted to the Rent Suit Munsifs. Although provision is made for the preparation of table of rates by Revenue Officers under the superintendence of the superior Revenue authorities, much will depend upon the exertions of the officer doing the original work, and if that is clumsily done, the Appellate authorities will feel great difficulty in altering it without holding another local investigation.

39. Without detracting the least from the merits of the Revenue Officers, it can be confidently asserted that such tables are likely to be better prepared by Munsifs who have been accustomed to try enhancement suits than by officers new to the work. At any rate, for the present, for *Revenue Officer* in section 62, it may be put down simply *officer*.

40. Instead of the assessors being appointed by the Local Government, it will be better to leave it to the landlord and the ryot, each to select one assessor.

41. *Section 71, clause* (2)—*From causes not merely temporary or casual.*—Temporary or casual causes may produce permanent improvement. The language ought to be clearer.

42. I approve the rules contained in sections 76 and 78.

Section 79, sub-section (1).—*Bonâ fide* contracts entered into before the passing of this Bill ought to be saved.

43 *Sub-section* (1) *clauses* (a) *and* (b)—*Have decreased from cause beyond the ryot's control and not merely temporary or casual.*"—The words "temporary and casual" have evidently been employed to mean that there has only been a temporary or casual decrease of the productive power; but according to the grammatical construction, the words temporary or casual refer to "cause." From temporary or casual cause there may be permanent decrease in the productive power. The language ought to be made clearer

44. *Section 82, sub-section* (2), *clause* (b)—Instead of five years I would make it ten. Sometimes high price prevails for years. There will be no difficulty in getting ten years' price-current, as the Bill provides that price-currents should be annually made and published.

CHAPTER VIII.

45. *Sections 91 and 92.*—If a section such as I have proposed in paragraph 24 be added, I have no objection to these sections; otherwise I would strongly oppose the applicability of these sections to the class of ryots mentioned in that paragraph.

46. *Section 93, sub-section* (2), *clause* (b).—The compensation for disturbance appears to be high: I would reduce it considerably. I would make it one year's rent, *i.e.*, the increased rent.

CHAPTER IX.

47. *Section 96, sub-section* (2).—The principle laid down in sub-section (3), regulating decrease, ought also to regulate the increase.

48. *Sections 97 and 98.*—In the absence of agreement and custom, the tenure holders ought to be made to pay their rent fifteen days and the ryots one month before the Government revenue payable on account of the estate to which the tenure or holding appertains becomes due; and when the tenure or holding forms part of a revenue-free property fifteen days or one month, as the case may be, when the road-cess on account of such property is payable.

49. *Section 100, sub-section* (1).—It will be useful to have the acknowledgment of the recipient on the counterfoil, when that is practicable.

50. *Section 102, sub-section* (3).—I would omit that sub-section, and substitute in its place a rule like this. If the landlord fails to produce with his plaint, in a suit for rent, the counterfoils for the previous three years, the plaint shall be rejected.

51. *Section 103.*—Payment of rent by post office money order ought to have legislative sanction. If a column in the money-order form be added to shew on what account the money-order is being sent, it would admirably suit the convenience of the ryots without causing any inconvenience to the landlord.

52. *Section 106, sub-section* (1).—In clause (c), section 103, is the officer to make any sort of investigation before ordering payment? In such cases the parties ought invariably to be referred to a suit.

53. *Section 108.*—*Liable to interest at the rate of 12 per cent. per annum.*—Some discretion ought to be left to the Court to meet exceptional cases; for example in years of famine, when the ryot is unable to pay, it would be very hard to decree interest at 12 per cent.

54. *Section 112.*—For Collector I would make Civil Court.

55. *Section 114, sub-section* (2).—First to the Collector and then to the Civil Court would be a tedious process, it ought at once to be disposed of by the Civil Court.

CHAPTER X.

56. *Section 128.*—An ordinary ryot is not likely to make any improvement, but his right to improve, in the same way as a settled ryot would, ought not to be restricted in any way by legislative enactment.

57. *Section 129, sub-section (4).—Urless it is shown that the landlord, &c.,*—I would omit that provision. That is likely to do more mischief than good.

58. *Section 130.—The Local Government may make rules with respect to assessors.*—The Bill itself ought to make provision for the appointment of assessors on the line of the Land Acquisition Act, and it ought not to be left to the Local Government to do.

59. *Section 133.—Except land entered in the general register of revenue-free lands prepared under the Land Registration Act, 1876.*—Landlords ought to have the right of measuring such lands when it is geographically situate within the limits of their estate. Without the measurement of the whole estate the *chita* cannot be complete. The measurement of such lands does no harm to the rent-free holder.

59. *Illustration to Section 133.*—So long as the putni continues, A ought not to have the right of detailed measurement, requiring tenants' attendance.

60. *Section 138.*—The Civil Court ought to decide it on evidence. If any officer under the Collector has special knowledge, he may be examined as an expert.

61. *Section 159, sub-section (1), clause (b).*—"*Unless the holding is let to another persor for the agricultural year following the surrender.*"—I would add : *or the landlord brings it unden khas cultivation.*

62. *Sub-section (2).*—All such notices would at once be served through the Court.

63. *Section 141, sub-section (1), clause (a).*—This will have the tendency of making *ryoti* land *khamar*. I would omit section 141 altogether, leaving the matter to be governed by the general principles of law.

64. *Section 150.*—Transfer of portion of a holding ought not to be void in law. The old tenant and the transferee may be jointly liable for rent ; or if the landlord does not choose to recognize the transfer of a portion, the old tenant's liability may continue.

CHAPTER XIII.

65. I approve the rules contained in this chapter. Ghatwali lands have been declared by the Privy Council not to be liable to sale even for arrears of rent. The provisions of this chapter will be of great use to the receiver of the rent of ghatwali lands.

66. *In section 167, sub-section (2),* the court-fee proposed to be charged ought to be reduced to half.

67. *Section 179.*—The officer holding the sale ought not to be allowed to distribute the sale proceeds ; the Court ought to do it.

CHAPTER XIV.

68. *Proviso to Section 198.*—'Substantial error' is a very vague expression. It ought to be explained that a wrong estimate of the evidence is not a substantial error, otherwise District Judges will be moved in almost every case to call for the record. To discourage useless applications, court-fee for applications to call for records ought to be levied, as in petition of appeals.

69. *Section 199, sub-section (3).*—This sub-section may be omitted as unnecessary. When the money is deposited under sub-section (2), it may be looked upon as a deposit under section 103 (*c*).

70. The provisions of section 202 I consider to be very salutary.

71. *Section 214.*—The notice ought to be served through the Civil Court.

72. *Schedule IV, Article 2, column 3.*—Instead of date of deposit, ought to be date of service of notice, as in section 81 of the present Rent (Act VIII (B.C.) of 1869.)

73. In conclusion, I regret that I was not able to send this report on the 14th instant.

No. 637, dated Sealdah, the 15th May 1883.

From—Baboo Mohendro Nath Bose, Judge, Court of Small Causes, Sealdah,

To—The Registrar of the High Court, Calcutta.

With reference to your letter No. 1157K, dated the 23rd ultimo, I have the honour to submit the accompanying few hasty remarks on the Bengal Tenancy Bill.

2. The time allowed was short, nor could I deal with the subject as it deserves. I have simply jotted down my opinion on the provisions generally, hoping the same would be acceptable to the Court.

Bengal Tenancy Bill, 1883.

The scheme disclosed in this Bill is, to my apprehension, simply for the protection of the ryot. Its object is to protect him from ejectment and from undue enhancement.

2. With reference to ejectment, it proposes for the separation of ryoti lands from the *khamar* lands by cadastral survey ; and provides that the ryoti lands should ever remain as ryoti and could never be turned into *khamar* by the zemindar. Such lands have therefore been made transferable by sale, and if the zemindar be the purchaser, it is provided that he should let these lands again to ryots.

3. The ryots again have been divided into what are called settled and unsettled ryots, but the tendency of the provision, as far as I can see, is to make them all settled ryots, with right of occupancy and power of transfer in course of time.

4. Such is the scheme, and I can only say that it vitiates very much with the law as current, and the traditions and ideas of men on the subject. This is in fact turning the ryots in a body into present proprietors. I do not know how this would work in the country, but in my opinion it bodes no good. The independent peasantry without a local controlling power is likely to abuse this privilege, would prey on each other, and may in an odd hour rise against the Government.

5. Again I see much difficulty in the way of dividing the lands between the ryots and the zemindars. As far as my experience goes, there are several lands which cannot be so divided, such for instance the *shashun*, *ragar*, *debattar*, and *gochurun*, &c., which enter so much in the economy of almost all Bengal villages. These are what may be styled the *commons* of every village, and these ought not to be placed into the *khamar* at the absolute disposal of the zemindar. Again there are waste lands, and lands lying uncultivated which are taken up by ryots at option, and are assessed by the zemindar at the time of harvestry; such as is the case of *atbundi* lands so prevalent in Nuddea and other districts. These lands are neither *khamar* nor ryoti, but became one or the other according to circumstances. Again in Behar the *banget*, the *bagat*, the *tar*, &c., lands do not bear any rent, but are held and enjoyed by the ryots at the option of the zemindar If these lands are placed in the category of *khamar*, as they no doubt are, incalculable mischief would be done to the ryots. These and several other similar considerations which I need not dilate here, incline me to believe that the contemplated survey would be to a very great extent a failure.

6. Next as regards enhancement, I need not say anything regarding the enhancement of rent of tenure-holders, as these seldom occur and are generally regulated by the contract between the parties. As regards the other class namely the settled ryots, the provisions in the Bill do not appear to be adequate, where there is no ascertainment of the rates by the Revenue authorities; the old formula of proportion is to regulate, and where there has been ascertainment of the rates, the Courts to assess according to a maximum and minimum scale. So that for some time, at least until the Revenue authorities settle and ascertain the rates, the same state of things would continue, and the irritation between the landlords and ryots in no way be abated.

7. The most important feature of the Bill, and whose want was much felt, is the limiting of the enhanced rent to double the former rent, or to a fifth of the gross produce in money value. I think this is fair and just to all parties. But I would have better liked if the share had been a fourth than a fifth. A *chowth* is the customary rate, and the zemindar has always laid claim to such a share in the case of trees grown by the ryots and in the sale of ryoti land.

8. *Section 119* provides for the conversion of the rent in kind into rent in money. Hitherto the landlords enjoyed and the ryots ungrudgingly paid them a half share of the produce of lands which are never permanently taken up by the ryots. The section limits such share to a five annas of the gross produce. Considering that these lands do not yield produce every year, and that the ryots cultivate them more as a speculation than otherwise, I do not see why the zemindar should not have his eight annas as before, when the produce is more the result of accident than exertion of the ryot. There are many swamps and marshy lands that are let away in this manner. Ryots who let out their lands to under ryots in the *vag* form, deserve a greater share of the produce when they themselves have to pay more than three annas to landlord according to the scheme proposed.

9. The Bill ignores private contract in many places. This is to be regretted. The privilege of demand and supply ought to regulate lands as in the case of other property. If the zemindar has the absolute property in any portion of the land comprised in his zemindari, I see no reason why the law should step in to regulate the disposal of such property. Waste lands and such others which belong to no ryot ought to be left at his absolute disposal, when the reclamation of such entails much outlay of capital. If encouragement is not held out to the zemindar in such cases, there will be a cessation of all improvements in the future.

10. In conclusion, I think some power ought to be left to the zemindar in dealing with the ryots, instead of turning them to mere rent collectors. They have ever been an honoured class, and the ryots have ever looked upon them for advice, protection, &c. It is not politic that such a class be reduced into insignificance. Disaffection and disturbance, I fear, will be the necessary result, and the country will not fare the better in the long run.

Dated Krishnagore, the 25th May 1883.

From—Baboo Amrita Lal Chatterjee, Subordinate Judge, Nuddea,

To—The Registrar of the High Court, Appellate Side.

With reference to your letter No. 1157M, dated the 23rd April 1883, I have the honour to make the following remarks on the Bengal Tenancy Bill.

After the discussion which the matter has undergone in the press, in the Council, and in the several Commissions appointed by Government, it is idle now to question the necessity for legislation on the subject.

The Government by introducing the Bill, has clearly admitted such necessity, and the Hon'ble Krishna Das Pal, the representative of the zemindars in the Council, has also admitted it.

The only point of difference between the Government and the zemindar on this question, is that the former holds that there is necessity for a general revision of the law of landlord and tenant, whereas the latter contend that legislation should be confined to the point of giving facilities to the zemindar for the speedy realization of rent, and effective enhancement thereof.

The zemindars loudly complain that the machinery of the Courts is not sufficiently effective to enable them to realize their rents in time to pay the Government revenue, and that the present law for enhancement of rent is practically unworkable.

The ryots unquestionably an ignorant set of people have no organ in the press, nor a representative in the Council, still their complaints are sufficiently loud to reach the authorities.

The complaints embrace the following points—arbitrary evictions, imposition of abwabs and illegal cesses, illegal attempts to increase rents, withholding of proper receipts for rents, and in some places the abuse of the power of distraint.

I think it has been pretty well established that the complaints of both parties are generally speaking not without foundation. Those who have any experience of the mofussil, know that it is almost impossible for the zemindars now to enhance their rents through the machinery of the Courts, and that in consequence they resort to all sorts of illegal means to accomplish their object. The result of all this is that illegal exactions and arbitrary evictions have not at all diminished. It is believed by some, who are competent to form an opinion on the subject, that these have increased in some places.

These oppressions are not unfrequently practised by landlords in cases where they have not the slightest shadow of a right to claim enhancement of rent.

Far be it for me to say that all zemindars are oppressive, or even that all the most oppressive landlords come from the class of zemindars, properly so called.

Besides the zemindars, there is the great body of the talukdars and other tenure-holders, who own interest in land, intermediate between the zemindars and the cultivators.

These intermediate holders are both rent-payers and rent-receivers; they are tenants as well as landlords. It is not unoften the case that the greatest oppressors of the ryots belong to this class of intermediate holders.

When the complaints of both parties, on so many important points, are generally well founded, it is clear that a general revision of the law of landlords and tenant is imperatively necessary.

Whatever opinions may exist as to the details of the Bills now before the Council, the general principle which underlies it seems to me to be sound.

The two main objects of the Bill are (1) to give reasonable security to the tenant in the occupation and enjoyment of his land, and (2) to give reasonable facilities to the landlord for the settlement and recovery of his rents.

From what Rai Krishna Das Pal, Bahadoor ,has said in Council, it is quite clear that even he is prepared to admit that the Bengal ryot is entitled to have what is popularly called the three Fs. secured to him. But what he contends is that the three Fs. have their fullest operation here.

That is a question in which different people may entertain different opinions. But what I am at present concerned with is in shewing that even the representative of the zemindar practically admits that, notwithstanding the provisions of the permanent settlement recognizing the zemindars as the absolute proprietors of the land, the ryots are entitled to have the three Fs. secured to them. The Hon'ble Member does not deny the authority of the Government to legislate for the protection and welfare of the tenants and ryots. When he admits that the permanent settlement regulations constitute the charter of both landlord and tenants, and when chapter 1, section 8, Regulation 1 of 1793, provides that the Governor-General in Council will, whenever he may deem it proper, enact such regulation as he may think necessary for the protection and welfare of the dependent talukdars, ryots, and other cultivators of the soil, the conclusion inevitably follows that the Government is bound to interfere for the protection and welfare of the ryots and dependant talukdars when the circumstances of the case require such interference.

The only question, therefore, that remains to see is, whether the circumstances of the case require such interference.

The result of the several commissions shews that there is necessity for such interference.

It is contended on behalf of the landlord that the principle involved in the Bill is a redistribution of property; but the answer which His Excellency the Viceroy has returned that this Bill is a Bill for the restoration, rather than for the re-distribution, of property, is complete and conclusive.

The Bill involves several questions of a complicated nature. Land questions are always and everywhere complex and difficult of solution. They are more so in a country like India, where the known principles of political economy can hardly have free play; custom, caste, and religious prejudices offering so many obstacles to their having full scope. I cannot, therefore, venture to handle the large economic questions involved in the Bill.

John Stuart Mill in chapters 6 and 7 of the Second Book of his Principles of Political Economy has dwelt on the advantages of having a body of peasant proprietors. But in the permanently-settled provinces of Bengal, peasant proprietors entitled to the enjoyment of the whole rents, profits, and wages cannot exist.

But I submit that that is no sufficient ground for disallowing to the great body of occupancy ryots the advantages which they can enjoy consistently with the spirit of the Permanent Settlement Regulations.

With regard to the question of the right of occupancy, I admit that the rule laid down in the Bill is a fair attempt to settle the complicated question. But I beg leave to submit that the rule is, in my humble opinion, open to some objections, the principal of which are, *first*, that it is not wide enough to reach the cultivators of the soil who hold their lands under occupancy ryots, and *secondly*, that it gives to the settled ryot the same rights with regard to lands which he has held for a year as to those which he has held for upwards of 12 years. I propose to deal with the second objection first.

I submit that it is not fair to allow a settled ryot of a village or estate to acquire all the rights of an occupancy ryot in any ryoti land which he may happen to hold as a ryot in that village or estate, irrespective of the time for which he has been in occupation of it. I am fully alive to the force of the able arguments of Mr. Justice Cunningham against the rule which leaves the right to accrue by a precarious growth through a series of years. But this objection would be obviated if the settled ryot were only protected from ejectment and arbitrary enhancement in respect of such lands. When the proposed right of occupancy carries with it under the Bill the incidents of transferability and sub-letting, this provision seems to me to unduly favour the ryot at the sacrifice of the interests of the landlord and the community.

A settled ryot may thus one year manage to rent a piece of ryoti land for a short term for nothing, and in the next year he may be desirous of selling it to another. The landlord, if he wishes to exercise his right of pre-emption, will have to pay to the ryot the market price of occupancy holdings, although the ryot may have done nothing to merit this reward. Some settled ryots may make it a profession to rent ryoti land for a year or so and then sell it for value. Even if transferability of such land be allowable, sub-letting is clearly objectionable; for sub letting, practically, means rack-renting.

I would, therefore, beg leave to propose that with regard to these lands the incidents of transferability and sub-letting be not annexed to the right of occupancy, unless the ryot has held the land for more than 12 years

There can be no reasonable objection, however, to clauses, *A*, *B*, *C*, *D*, *F* and *G*, applying to a settled ryot in respect of such land.

With regard to the second objection, I beg most respectfully to observe that the discussions during the negociation of the permanent settlement, shew that it was accepted as a general maxim that the immediate cultivator of the soil, duly paying his rents, was not to be dispossessed of the land he occupied.

In the letter to Lord Cornwallis, dated 19th September 1792, the Court of Directors observe:—"Our interposition, where it is necessary, seems also to be consistent with the practice of the Monghul Government, under which it appeared to be a general maxim that the immediate cultivator, duly paying his rents, should not be dispossessed of the land he occupied.

Lord Cornwallis, in his Minute of 3rd February 1790, observed:—"Whoever cultivates the land, the zemindar can receive no more than the established rent, which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving land to another, would be vesting him with a power to commit a wanton act of oppression from which he would derive no benefit."

The above passages make it clear that the intention of the authors of the permanent settlement was to prohibit the wanton and arbitrary evictions of ryots, or actual cultivators of the soil.

It may not be either proper or advisable to invest all cultivating ryots alike with the statutory right of occupancy; but regard being had to the intention of the authors of the permanent settlement, it may not be improper to restrict, within certain limits, the right of the landlord to evict a cultivator from his land.

In the present circumstances of the country, a large portion of the immediate cultivators of the soil are kerha, or under-ryots; and when the Bill recognizes sub-letting by occupancy ryots, the number of these under-ryots will gradually increase.

Sub-letting by occupancy ryots is practised all over the country and has been recognized by our courts. It is neither expedient, nor possible, therefore, to abolish the practice by a legislative enactment.

In an agricultural country like India, where the great bulk of the population are agricultural tenants, whose sons must, in the present circumstances of the country, necessarily, live upon and by agriculture, it is almost impossible to abolish by a legislative enactment the sub-letting of land by occupancy ryots. The population of the country is increasing under the beneficent rule of the British Government at an enormously rapid rate, but the area of culturable land has almost reached its natural limit.

The excess agricultural population must, therefore, derive their lands from the existing holdings: there will, therefore, be either sub-division, or sub-leases, of the holdings, and probably both.

Those occupancy ryots who have sub-let their lands and have, therefore, ceased to cultivate them, are clearly in the position of middlemen; the drone of society, and the sub-ryots under them, who are the actual cultivators of the soil, are the really useful members of society; they are, therefore, entitled to favourable consideration at the hands of the legislature.

Much discussions took place among the several members of the Bengal Rent Commission as to what advantages should be given to such cultivators.

In the 22nd meeting of the Commission it was decided by the majority of the members that the sub-ryot under an occupancy ryot "shall be protected against arbitrary ejectment by his landlord so long as he pays" his rent.

Mr. Mackenzie proposed to give the sub-ryot sub-occupancy rights, good against the occupancy ryot, but not against his landlord.

The Bill allows sub-letting by occupancy ryots, but it contains no provision protecting the under-ryot from arbitrary ejectment by the occupancy ryots.

I humbly submit, will it not be proper, therefore, to make some provisions for the protection of these classes of ryots; 1st, because on account of their weakness they are specially entitled to the protection of Government, and also because they come within the words used in the letter of the Court of Directors, and the Minute of Lord Cornwallis, referred to above.

I beg leave to suggest that they be allowed to have some sort of sub-occupancy rights which will protect them from ejectment so long as they duly pay their rents. They should, however, be absolutely prohibited from either transferring or sub-letting their lands. As to enhancement of rent, the same rules should govern them that govern the occupancy ryots; but the rate of rent payable by these sub-occupancy ryot ought not to be equal to the rate payable by occupancy ryots.

The provisions in the Bill, prohibiting the parties from contracting themselves out of the land, seems to be judicious. When one of the parties is so unequal to the other in education, wealth, and general intelligence, there can be, properly speaking, no freedom of contract between them.

Instances are not rare where ryots have been cajoled to give up their valuable rights for nothing.

In dealing with what are called the ordinary ryots, the Bill does not go far enough.

In the Statement of Objects and Reasons it has been stated that after a full consideration of the position, it has been determined that the legislation to be undertaken by the Government shall proceed on the assumption that the occupancy right is to be recognized as appertaining only to such tenants as may be shown to be, in some special sense, settled or permanent.

It proposes, however, to fetter the landlord's right to evict an ordinary ryot, with certain conditions.

The rules laid down in section 90, chapter C of the bill, for the protection of these ryots from arbitrary evictions, appears, however, to be opposed to the notions of the people, and unsuited to the circumstances of the country.

The bill authorizes the landlord to evict an ordinary ryot from his holding, in execution of a decree, if he does not agree to pay the enhanced rent demanded, on condition of the landlord's paying to the ryot, within a certain time, compensation for disturbance, in addition to compensation for improvements.

There can be no question about the fairness of the provisions, giving compensation to the ryot for improvements made by him, but the provision, allowing compensation for disturbance, involves a new principle foreign to the custom of the country, and not yet recognized by our legislature in dealing with the questions between landlord and tenants.

If the landlord has a right to evict the ordinary ryot, even when the latter agrees to pay fair rents, the former certainly is not bound in equity to give the ryot any compensation for disturbance.

If, on the other hand, the landlord has no right to evict such ryot, so long as he duly pays fair rents, compensation for disturbance will be no adequate remedy to the ryot for such evictions.

I submit that some rules ought to be formed regulating the enhancement of rent of such ryots, and allowing evictions in such cases only if the ryot fails to pay within a limited time the enhanced rent decreed by the Courts

In the framing of such rules, the legislature might give the landlord more advantages, and the ordinary ryot, less favorable terms than those given in the case of occupancy ryots.

If, however, the legislature do not think it proper to interfere betweeen such ryots and the landlords, in respect of the enhancement of rent, save as is provided by section 119, I submit that the clause allowing compensation for the disturbance of the ryot, may be left out altogether.

With due deference, I beg to submit that the registration system ought to be extended to occupancy holdings.

The extension of this system to these holdings will, in the long run, tend to diminish litigation by preserving a permanent record in the zamindar's sherista, of the transfer of, and succession to, such holdings.

There may be some difficulty, at the outset, in bringing home to the ryot the details of the system but in time the difficulty will be overcome.

The harm which is likely to arise from the extension of the registration system to such holding, will be infinitely less than that wnich will probably accrue from the non-extension of that system to, such holding.

Even if the legislature were not to make the provision of chapter IIID expressly applicable to occupancy holdings, the court would in many cases make the transferers liable for rent accruing, due subsequent to the transfer, on the ground of want of knowledge of such transfers.

Thus, the transferring ryots will in many cases suffer a disadvantage, without the transferee enjoying probably, in any case, the privilege of registering the transfer in the landlord's sherista, and thereby making his title secure. The registration fee in such cases should, however, be lowered.

Without full statistics on the point, it is difficult to say in what parts of the country occupancy rights are saleable by custom, and where they are not But this much I can say, that even in those parts of the country, where the question of the existence, or otherwise, of the usage, is hotly contested in our courts, people do, as a matter of fact, buy and sell such right, in and out of court. Not only are occupancy rights sold in this manner, but even lesser rights. Such terms are thus constantly made the subject of sale. Even zamindars are not un-often found to be the purchaser of such rights.

Lest the sales are invalidated by our courts, the kabalas generally falsely describe the occupancy right as a mourasi jote, and, where a zemindar is the purchaser, he invariably insists on this description, but otherwise his conduct shews that he recognizes the existence of the custom.

The statement published along with the report of the Bengal Rent Commission shews, however, that ryots' holdings are, almost everywhere throughout the country, sold at execution sales. It is only in Pubna, Purneah, Sarun, Balasore and Cuttack that occupancy rights are very seldom sold at such sales. Thus, it is clear that occupancy rights are generally sold in the greater part of the province. It will therefore be only proper for the legislature to recognize the fact and legalize the custom.

The provision in the bill giving the landlord the right of pre-emption, is certainly a judicious one, as it will enable the landlord to avoid an inimical tenant. But the rule contained in section 56, unless modified, is, in my humble opinion, likely to be prejudicial to the landlord.

The landlord will have to pay for the occupancy holding, but a ryot to whom he will let out the land wil get an occupancy right in it for nothing.

I think that a ryot in such a case should acquire a right of occupancy, only if he would pay the amount at which the landlord purchased the holdings.

A Patnee under the bill, includes a darpatnee, and other similar under-tenures; the provisions for the summary sale of a patnee of the first degree have not been thought proper to be made applicable to darpatnee, and the rest, I think, however, that the extension of those provisions to all degrees of inferior patnees, will be a boon to the superior patneedars, without producing any appreciable injury to the darpatneedar and the rest. It will facilitate the recovery of arrears of rents due in respect of such tenures.

The zamindars justly complain that the present law for enhancement of rent has become, to a great extent, a dead letter.

The present bill proposes to deal largely with this subject, but I am not without doubts as to the sufficiency of the proposed rules to make legitimate enhancement an easy matter.

The Purgunahs rates have, in most parts of the country, long ceased to exist. The rates will have to be properly ascertained by competent revenue officers for each village. That is not an easy matter to accomplish, and it is doubtful if it will be accomplished without much trouble, expense and time. For some years at least, the officers dealing with the question of enhancement will have to work without the aid of the tables. In such cases the difficulty will remain as before.

I beg to suggest that so long as tables of rates are not prepared, the question of enhanceability or otherwise be determined by the civil courts as now; but that the question of proper rates be decided by competent revenue officers, after holding a local investigation on the spot.

Inducements ought also to be held out to both landlord and tenants to have recourse largely to the provisions of chapter XI.

Section 125 provides that the rent of a tenure occupancy holding or bastu holding shall be a first charge on the same.

In the 16th meeting of the Bengal Rent Commission, it was unanimously held that a landlord having obtained a decree for arrears of rent due upon any transferable tenure or holding, shall be bound to bring such tenure, &c, to sale in execution, before taking out execution against the person, or other property of the judgment-debtor.

It appears to me that this is a fair and equitable provision.

No reason has been assigned for omitting this provision from the bill.

The present law, as settled by the High Court, is that a decree-holder after having obtained a decree for arrears of rent, may proceed against any property of the judgment-debtor he likes. The High Court has come to this conclusion on a question of construction, but I do not think that the Hon'ble Court maintains that this is an equitable doctrine.

It is necessary that the legislature should define what particular acts of disclaimers should work a forfeiture.

The Hon'ble Krishna Das Pal complained of the tendency of the Bill being to promote and foster litigation, and set class against class.

There will be some ground for making the charge if the record of rights promised by Government be not complete or accurate.

If, however, the record be both complete and accurate, half the litigation between the landlord and tenant will be unnecessary; one cause of the increase of litigation certainly is the uncertainty of the rights of the several parties interested in a particular subject matter. It will, I think, be very uncharitable to suppose that people resort to the courts simply because they love litigation for its own sake. They go to the courts in most cases simply because the rights of the contending parties are not certain.

In whatever degree the record of rights will be complete, accurate, and accessible to the

public, in the same degree litigation will diminish and good feeling will exist between the parties, between whom feelings the very reverse of which now subsist.

I would therefore earnestly solicit the Government to begin at once with the preparation of the record of rights.

The word land requires to be defined.

I do not think there can be any reasonable objection to making chapter IXD applicable to the ground rent of bustee. and shop, and other lands. I know from my own personal experience as a Small Cause Court Judge that tenants of bustee and shop and other lands labor under a very great disadvantage in consequence of the absence of any provision for the deposit of rents payable by them. I therefore beg to suggest that the provisions of this chapter IXD, be made applicable to these classes of tenants also.

Section 139. The following words, I submit, ought to be added after chapter B, "or the landlord himself cultivates the land"

Section 177. No delivery should be made before payment.

Section 181. After the words "if at any time" the following words, "before an order for distraint has been made," should be added.

Dated Calcutta, the 14th May 1883.

From— BABOO MOHENDRO NATH MITTER, Judge, Small Cause Court, Moorshedabad.

To—The Officiating Registrar of the High Court of Judicature at Fort William in Bengal.

I HAVE the honor to acknowledge the receipt of your letter No 11570, dated the 23rd April last, and in compliance with the request contained therein, to submit the following observations on the provisions of the Bengal Tenancy Bill, 1883, to the consideration of the Hon'ble Court.

2. The avowed objects of the Bill are to improve the status of the ryots, to afford every facility for the acquisition of the right of occupancy, to simplify the procedure for enhancement of rents, and for the realization of undisputed arrears, and in general to place the relations between landlords and their tenants on a sure and satisfactory footing. In view of these objects, many new provisions have been introduced into the Bill which trench upon the legal, and hitherto undisputed, rights of landlords, and will, I am afraid, prove injurious to the interests of both the parties, cause much trouble and litigation, and in the end disturb their relations more than ever.

3. I will take up the several chapters of the Bill in their order In chapter I, the terms "tenure-holder" and "ryot" have not been sufficiently defined for the purposes of the Bill, and cases as apprehended in the "Statement of Objects and Reasons," will arise when the difficulty will be to draw the line of distinction between them. Then again, no denomination is given to persons who may own only bastu or homestead land without being settled or ordinary ryots, nor are their rights and habilities dealt with in the Bill. Thus a large class of persons, such as barbers, blacksmiths, weavers, potters and other artisans, who may not hold land for the purpose of agriculture, horticulture or pasture, are excluded from its operation.

4. In chapter II, provisions are made for ascertaining and fixing the quantity of khamar land in each village, with the object of preventing landlords from increasing it hereafter. The definition of "khamar land," as given in this chapter, seems to be arbitrary, and the provisions made therein are a clear infringement of private rights. A landlord can now increase the quantity of his khamar or nij jote land according to his discretion, as opportunity offers. If a ryot absconds, or surrenders his holding, or is ejected therefrom, the land may be converted into khamar, and there is nothing in the law to prevent the landlord from doing so. It is altogether a matter affecting his own interest, and no good and sufficient ground is shown why he should be restrained in the exercise of his undoubted right.

5. In chapter III, section 17, in case of land held at a fixed rent, from the time of the permanent settlement being amalgamated with other land into one holding, the character of the tenure will generally be lost, and it will be difficult to ascertain whether the rent had varied or not Again, in section 18, if by "a tenure" is meant a tenure held at a fixed rent from the time of the Permanent Settlement, then its liability to enhancement of rent on the grounds stated in clauses (*a*) and (*b*) will be a matter of great hardship to its holder, who will scarcely be able to stand against a mass of false evidence that will usually be brought by his more powerful adversary to prove a custom or a condition. The expression in clause (*b*) "and that the lands are capable of affording it" is vague.

6. Sections 27 to 35 relating to the registration of transfers of, and successions to, permanent tenures, are decidedly an improvement on the present law. In section 34, provision should be made for the granting of certificates of copies of entries in the register, by the landlords' authorized agent also. I think this registration system might with advantage be extended to occupancy holdings. The proposal of the Rent Commission on this point ought to be adopted, for experience has shewn that the evils attending non-registration of transfers of such holdings are grievously felt by a larger class of people, than the holders of permanent tenures.

CHAPTER IV.

7. Relating to patni tenures, does not call for any notice, as the present law is left substantially unchanged.

CHAPTER V.

8. Is an important chapter in the Bill. The acquisition of a right of occupancy by a settled ryot as defined in section 45, holding any ryoti land, notwithstanding any contract to the contrary, is a startling innovation made in the existing laws and usages of the country. And I do not see any justification for it. The ryots for whose special behoof this innovation is sought to be made, do not wish that the established law on this subject should be unsettled. The landlords, on the other hand, have good reason to protest against this invasion of their rights. In this state of things, where is the necessity for enforcing a law which the people do not want? Why disallow contracts duly made and interfere with the rights of private property? All that is contended for by the ryots is that the right of occupancy is, and should be, a transferable right. And on this point the Bill very properly gives them the relief they require. Transferability, as an important incident of this right, is generally unfavourably looked upon by the landlords, but custom favours it, and they have no right to complain of the provisions of section 50, when a right of pre-emption is reserved to them by the subsequent sections.

9. *Section 56*, which purports to confer at once a right of occupancy on a ryot to whom land purchased under the pre-emption sections by a landlord is let, appears to me to be objectionable. It is said in the "Statement of Objects and Reasons" that this will prevent a landlord from buying up on a great scale the occupancy rights on his estate or tenure, with a view to locating ordinary ryots on the land But you cannot prevent him from converting the land into khamar or nij jote. If that be so, the provisions of chapter II of the Bill would be null and void, and in course of time the quantity of such land shall increase to the detriment of the tenantry and the agricultural prospects of the country.

CHAPTER VI.

10. Is another important chapter in the Bill. Sections 59 to 61 are open to grave objection. If an occupancy ryot agrees to pay a higher rent than that previously paid by him or by his predecessor, no such restriction as is sought to be laid down in these sections ought to be imposed by law. All that can be reasonably insisted upon, to protect him from the consequences of his ignorance and credulity, is that such agreement shall be in writing, and registered under the Indian Registration Act in force.

11. *Sections 62 to 73*, which deal with the preparation of a table of rates and produce, and suits to enhance rents, when such a table is in force, seem to me to be of questionable efficacy Considering the variety of the rates of rent usually paid by occupancy ryots in one and the same local area, I am of opinion that the preparation of a general table of rates by a revenue officer with any degree of accuracy will almost be an impossibility. Of the three grounds for enhancement of rents under the present law (section 18, Act VIII, B.C, of 1869), the most difficult to deal with is the second ground, *viz*, "that the value of the produce or the productive powers of the land have been increased otherwise than by the agency, or at the expense of the ryot." The rule of proportion laid down by the High Court, in "the great rent case," has, it is true, practically become unworkable, owing to the complicated nature of the enquiry it involves, and the want of reliable materials to work upon. To meet this difficulty a less ambitious table, shewing only the average value of produce, and the average quantity of produce, and cost of production per beegah, in staple crops, of any local area, at the time of the enquiry, as compared to any other time back, which may appear to be fair and equitable, might be prepared with greater accuracy and less trouble and expense, leaving the Civil Courts to determine upon evidence whether or not the increase, if there be any, has been brought about otherwise than by the agency, or at the expense of the *ryot* The other two grounds for enhancement are clear enough, and do not present much difficulty.

CHAPTER VII.

12 Gives a permanent right in bastu land to a settled *ryot* of a village, notwithstanding any contract to the contrary. This is a new provision quite opposed to the law in force. If a ryot wishes to build his dwelling-house on a particular piece of land, it is his look-out to take a proper lease from, or come to proper terms with, his landlord; and there seems to be no valid reason for setting aside a contract duly made between the parties. In section 86, the provision for compensation does not appear to be just and reasonable; for, if a tenant is liable to ejectment for breach of contract, it would be a hardship to his landlord to pay compensation to him for any dwelling-house and out-offices erected on the land. All that the tenant can fairly ask for is their removal within a stated period

CHAPTER VIII.

13. In *Section 93* the provision for compensation appears to be also unjust and unreasonable.

CHAPTER IX.

14. In *Section 98* a wholesome provision is made, fixing four as the maximum number of instalments in which rents of ryot's holdings are to be paid This will prevent much harassment and trouble, to which the ryots are subjected Sections 100 to 102, regarding receipts and accounts to be given to tenants, will also prove beneficial to them as well as to their landlords.

15. *Sections 103 to 107*—Relate to the deposit of rent by a tenant in a public office, clauses (*b*) and (*c*) of section 103 are certainly good additions to the present law; but clause (*a*) will become a source of great annoyance to the landlord. It is better that there should be a tender and refusal, for otherwise tenants will, in the majority of cases, refuse to go to the landlord's cutcherry to pay rents, and the landlords will be put to much trouble and expense in drawing the money deposited. The feelings of the parties, moreover, will be more and more estranged as this clause is more and more resorted to.

CHAPTER X.

16. *Sections 126 to 132*—Which deal with improvements on ryots' holdings, are wholly unnecessary. They will only introduce complications into the relations between landlords and tenants, and cause much harassment and litigation to both the parties. Sections 142 to 148, which provide for the appointment of a manager on behalf of co-owners of an estate or tenure, are, as has been pointed out in the "Statement of Objects and Reasons," an improvement on the present law.

CHAPTER XI.

17. Which treats of the settlement of rents by a Revenue officer, might be made available for the purpose of Government settlements; but the application of it to private estates without the instance of landlords, would be an usurpation of their rights, and lead to much discontent and disaffection. This and the following chapter, which are introduced into the Bill with one and the same object, appear to be quite uncalled for. The landlords, as a rule, will not apply for the enforcement of their provisions, and if they be enforced at the instance of the tenants, or for the settlement of an agrarian dispute, they will resent, offer every obstacle to the proceedings and carry litigation to the bitter end. And the result would be ruinous to both the classes. Facilities for realizing undisputed rents and for enhancing them under the law in force are only sought for by the landlords in Bengal. The tenants, on the other hand, are already sufficiently protected from illegal impositions. They know how to unite and assert their rights. Their occupancy rights are made freely transferable by this Bill, a reasonable limit has been fixed to the number of instalments in which their rents are to be paid, and the receipts and accounts they are to receive from their landlords will supply them with all evidence they might require in defending rent suits. They have nothing more to complain of. The only point for consideration is, how are those facilities required by the landlords to be given? The provisions of the Bill regarding receipts and accounts will as well help them in recovering their rents, and a simpler procedure than that which now obtains will ensure their speedy recovery. As to enhancement of rents, the preparation of a table, such as that indicated in paragraph 11 of this letter, would remove the main difficulty. Why then introduce these chapters and other novel provisions when nobody asks for them, and unsettle the minds of the people and the law of the country?

CHAPTER XIII.

18. Very properly gives a modified power of distraint to the landlords, and ought to be retained I would, however, suggest that section 172 be so altered as to give at least 7 days' time to a defaulter or the owner of distrained property, where he is not the defaulter, to make the deposit under section 181; and to prevent abuses, provision should also be made for the owner of distrained property, when he is not the defaulter, to institute a suit to contest the legality of the distraint within the specified time without making a deposit, provided he can shew any sufficient cause for not making it.

19. The procedure applicable to suits between landlord and tenant (chapter XIV) has been as much simplified, as it possibly can be, with a due regard to justice. In section 202 the maximum period during which it shall be open to the defendant to pay compensation, or where the damage or breach is declared to be capable of remedy, to remedy the same, should be fixed, and not left to be determined by the court at its discretion. And in section 203, clause (*b*), the words "together with reasonable interest on that value" ought to be omitted, for in a decree for ejectment it does not appear fair and equitable to compel the landlord to pay interest over and above the value of the labour and the capital expended by the tenant in preparing his land.

CHAPTERS XV, XVI, AND XVII

Do not call for any remarks.

No. 82, dated Khulna, the 21st May, 1883.

From—Baboo Bhogowan Chandra Chakravarti, Subordinate Judge of Khulna,

To—The Registrar of the High Court of Judicature at Fort William in Bengal.

Agreeably to your order conveyed in your letter No. 1157J, dated the 23rd ultimo, I have the honour to submit the report therein called for.

The question of the relation of landlord and tenant in this country involves in itself many problems which are of considerable difficulty, and indeed although they engaged patient attention of the Legislature for many years, the practical solution of some of them is still distant. The present Rent Bill is an embodiment of the practical rules of law which attempt to remove those difficulties. As it is the result of thought and research of many eminent

lawyers and practical men of business, and as it has had due publicity and evoked honest opinion and criticisms from all parts of the country, I think it will not be necessary for me to dwell on the subject in detail. I will confine my remarks on the cardinal points of the Bill.

The provisions of Act X of 1859, subsequently and substantially embodied in Act VIII of 1869 (B.C.), have failed, as experience tells us, to bring about the desired effect on all subjects regarding the relation of landlord and tenant. It is found that law courts can do little or nothing with the cases of enhancement and settlement of rents, and enhancements are introduced by tortuous acts and illegal means, where the landlords are strong and raiyats weak, and on the other hand just demands of rents are successfully resisted where the raiyats are strong and the zemindars weak. Such a state of things must be put down It is, therefore, necessary that there should be such a legislative measure as would give facilities to the landholders for recovery and enhancement of rent, and afford protection to the poor raiyats.

The distinction between tenure-holders and raiyats has not been clearly drawn. Cases may and often occur in which it will be difficult to ascertain whether a tenant is a tenure-holder or a raiyat.

The definition of tenure in section 3 is too general and vague, and may lead to confusion.

CHAPTER II.

Section 5.—The distinction between *khamar* and *raiyati* land has been properly made, and they should be defined and registered as proposed in the Bill. I do not see any reason why the raiyats occupying *khamar* lands should have better right than those occupying *raiyati* land. In my humble opinion, if the land is defined and registered as *khamar* or private land of the proprietor, the raiyats occupying it should be allowed to acquire right of occupancy without the consent of the proprietor.

CHAPTER III.

Sections 21 *to* 25.—Provided (1) that rent may be enhanced up to the limit of customary rate; (2) where there is no customary rate, it may be enhanced to such limit as shall appear fair and equitable, but the profit of the tenure-holder shall in no case exceed 30 per cent To prevent these provisions from working hardship, the following limits have been proposed. (*a*) :—Enhanced rate shall not in any case be double of the previous rent. (*b*) The rent shall increase yearly by court's order during any number of years not exceeding five. (*c*) The rent once enhanced shall not be altered for ten years.

These limits, I believe, will seriously tell upon enhancement. The economical condition of the country and the quality of the land may be so changed that the limits (*a*) and (*c*) would not be applicable. Such limits as proposed above would stand greatly in the way of progress. Neither the tenant nor the landholder would be induced to bring on improvement on the land.

Section 59.—Enacts that money rent payable by an occupancy raiyat may be enhanced by contract in writing, approved of and registered by a Revenue Officer, who will be absolutely debarred from registering any contract by which a raiyat engages to pay more than six annas in the rupee, higher than the existing rent or more than one-fifth of the estimated gross produce. This section is supplemented in 61st section by somewhat similar provisions, and its tendency is to hamper free contract as much as possible.

Sections 76, 78.—Provide the same limits as are found in sections 21, 25, and the same remarks that have been made above as applicable to these.

The suits for enhancement of rents of occupancy raiyats have been sub-divided into two classes, *viz* (*b*) of chapter VI for suits to enhance money rents where a table of rates has been prepared, and (*c*) for such suits where a table of rates has not been prepared. (*B*) contains only tentative measures which will have their operation when the tables will be complete. What the results of these tables will be, is a matter still in the womb of futurity, it is well known that there are many parts of the country where recognized rates of rent have no existence, and even if there be so, the soil of the country is so various that it would be difficult, if not impossible, to prepare the table within a reasonable time; perhaps when the table will be prepared the relation of landlord and tenant might be such as would not require the assistance of such a table. As for the sub-division (*c*), the rules of enhancement have been left where they were before. Practically it will be as difficult to enforce these rules, as when the rules under Act X of 1859 were in force.

CHAPTER V.

One of the most important chapters of the Bill. The right of occupancy is the creation of Act X of 1859, and having been recognized since then, it cannot now be ignored. There is already in the country a class of raiyats who enjoy such a right, and it is high time that that right should be defined and protected. The framers of the present Bill, however, not content with recognizing the incidents of the right of occupancy already existing, have attached some others, which are new and hitherto unrecognized. The right of occupancy is acquired by settled raiyats holding *raiyati* land, notwithstanding any contract to the contrary. This is contrary to the principles of the law of contracts, and is too great an interference with the freedom of parties. The reasons assigned for such a measure are that the zamindars as a body are so powerful that they can induce or coerce poor raiyats to enter into wrongful contracts.

There may be, no doubt, oppressive zamindars who, by illicit means, might induce the raiyats to enter into illegal contracts. But such instances are rare, and it cannot be said that a practice of getting into illegal contracts obtains, as a rule, throughout the country. If there be a small class of raiyats who might be induced to enter into wrongful contracts, should principles of equity be sacrificed for the protection of that small minority? I humbly think that such a saving clause is not necessary. Besides, if the freedom of contract be repressed altogether, somehow or other it may burst out in another, and probably worse, direction. The following are some of the incidents, of right of occupancy as proposed in the Bill that call for notice:—(*a*) The raiyats may subet; (*b*) his interest is to be transferable and hereditable. The right of sub-letting and transferring without the consent of the landlord, sanctioned by law, is, in my humble opinion, objectionable. It will be readily admitted that if the raiyats who are proverbially improvident and unthrifty be left to mortgage or sell their tenures, they will easily spend large sums of money to celebrate marriages of children, &c., by mortgaging or selling their tenures, and thus contract debts and fall into the hands of unscrupulous money-lenders. It is well known that sub-infeudation is the cause of misery to the raiyat, and if the occupancy raiyat be allowed to sub-let, the pressure will no doubt at last fall on the actual cultivators; transferability shall have the same baneful effects. The powers of transferring and sub-letting recognized by the Bill, will in time bring on a state of things in which the great bulk of actual cultivators would not have the advantage of becoming occupancy raiyats, but under-raiyats, having but little protection from the law. Section 56 confers the right of occupancy on a mere squatter—a provision which requires but little comment. The evils arising from transferring have been sought to be mitigated by giving the powers of pre-emption to landholders, but this power, I submit, will not be a sufficient safeguard against too frequent sales and mortgages. The transferability of such tenure has, no doubt, grown almost into a custom in some of the districts, but its consequences are, I believe, *nil*. The present miserable condition of the Bengal raiyat is a sufficient evidence of the evils of that custom. The ultimate results of this transferring and sub-letting will, I fear, be that a new class of men, quite unmanageable, will be thrust into the lands of the zemindars. The conferring of the right of occupancy on a raiyat who has occupied the land purchased by the landlord by his power of pre-emption is a restriction which militates against pre-emption powers.

CHAPTER VIII.

The principles formulated into law in this chapter are new, and quite foreign to the ideas of the people; if the provisions will be enforced, they would embitter the feelings of the landlord and tenants. If the landlord has the right to eject, his powers should not be clogged by making him pay compensation for enforcing it. If he has not the right no money payment ought to be sufficient to give it to him. If these at all pass into law they should be restricted. If the tenants fall into arrears and make three successive defaults in payment of rents, the landlords should be justified to eject them.

CHAPTER IX.

Instalments in which money rents are payable should be uniform, and should tally with the instalments by which rent or revenue is payable by superior landlords.

Sections 100, 101 *and* 102.—Impose penal damages for refusal or neglect to give receipts (*dakhilas*) and statements of accounts prescribed in them. The principles involved in them, however correct, would practically work hardship on not a small class of petty landowners, most of whom are ignorant men and women, who cannot possibly keep accounts and give receipts in the forms prescribed.

Sections 103 *to* 107.—The provisions for these sections give direct means in the hands of the raiyats to deposit rent without tendering it to landlord, which will give them full acquittance of their payments. Their effect will be to make the tenants refractory.

CHAPTERS XI AND XII.

Contain measures, some of which have a tendency to trench upon the jurisdiction and powers of the civil court. I submit that all questions of a civil nature that will arise before a revenue officer engaged in the settlement of rent should be referred to the civil court for decision.

CHAPTER XIV.

The procedure as laid down in Chapter XIV can hardly be made more simplified, for in rent suits in this country questions of right frequently arise, which cannot be coped by summary procedure.

Section 200—Enacts that applications for execution of decrees for arrears obtained by landlord shall not be made by an assignee of the decree holder; its effect would be to throw obstacles in the way of executing large number of decrees. There may not be unfrequently cases in which widowed females and ignorant men, not conversant with the rules and practices of the Court, and who are in extreme need of money, look upon decrees as moveable properties and sell them. It mitigates, no doubt, one class of evils; but it fosters another.

Sales.—If occupancy right be made transferable by law, I submit that too many sales and mortgages may be checked by imposing the condition upon all sales that take place in execution of decrees for rents, that they should avoid all encumbrances.

Section 224, Limitation.—This section is objectionable, on the ground that it remedies one evil, but creates another. It protects minors against accumulations of rents but exposes them, helpless as they are, to the rapacity of unscrupulous landlords.

Lastly, I beg to suggest that retrospective effect should not be allowed to be given to any new provisions now made.

No. 17, dated Alipore, the 13th June 1883.

From—NUFFER CHUNDRA BHATTA, First Subordinate Judge, 24-Pergunnahs.

To—The Registrar of the High Court, Appellate Side, Calcutta.

I have the honor to forward herewith a few observations on the Rent Bill, prepared hastily, as I had no sufficient time at my disposal.

Bengal Tenancy Bill.

I think the Bill, with its sections 45, 47, 49, and 50 except clauses (*a*), (*b*), (*c*), and (*g*), 56 and 57, will be hard upon the landholders generally, and upon the tenure-holders of limited means specially. The fear of ejectment makes the ryots punctual in payment of rent. A decree for rent, coupled with an order for ejectment, if the arrears are not paid within 15 days, as passed now under the present law, is far more readily obeyed than a bare decree. If 90 per cent. of the ryots have already acquired right of occupancy, the remaining 10 per cent. will obtain it as soon as the Bill is passed. Then the sale of the transferable tenure will have to be almost universally adopted. But sale, with its previous enquiries into claims by third parties, and objections to set it aside on the grounds of irregularity, and so forth, is a very cumbrous and dilatory proceeding. Ryots have seldom valuable moveables, and such as they have are easily removeable from the ken of a decree-holder. The most tangible portions of them, such as draught cattle and implements of husbandry, cannot be seized under the law.

I fear no valid custom of transfer of the occupancy right could yet arise, as Act X was passed only in 1859, and custom, in order to be valid, must be immemorial. Where the landlords have acquiesced in such a custom, transfer of the right, as it at present exists, is not very injurious to them. The right subsists "so long as rent.....is paid," and transfer cannot change the nature of the right itself. So that, when transfer takes place, the landlord has yet the option of either bringing the jote to sale or of ejecting the ryot or transferree for arrears. If the right of transfer were conveyed subject to landlord's power of eviction in case of arrears, it would be preferable to the proposed form. It would be better still if the ryots were required to pay a small sum as *selami* before they acquired the right, as a compensation to the landlords, specially when they themselves would have to pay a price to get their own land back if they wished to buy right of occupancy in any case by right of pre-emption. Freedom of contract should not be much curtailed, and particularly the existing contracts should be maintained.

As to enhancement, the maximum standard of one-fifth share of the produce would be too small, and might lead to abatement of rent in many places. One-fourth share, proposed by the British Indian Association, is not unfair to the ryots. There are communities of Burga or Adhibhag ryots in Nudden, Jessore, Moorshedabad, &c., who pay one-half of the produce to the land-owners. The remaining one-half, therefore, not only pays the wages of labour, interest on capital, &c., but also leaves a profit; or how do those communities manage without any other profession? If, then, the occupancy ryots were to let their lands in Burga, they would yet get one-fourth share as their clear profits, and they and the landlords be equal partners in the profits of land. One-fifth share would be too small to support the so many holders of tenures, under-tenures prevalent in Backergunge, Jessore, Furreedpore and Noakholly.

It were better if some of the small under-tenure-holders were brought out, either by zemindars or by the Government. The idea of a table of rates and produce is good, and may be beneficial in eastern districts. But the rates are now so variable, and the work so gigantic and expensive, that I doubt its feasibility.

I cannot recommend any more expeditious course for recovery of arrears, for a summary procedure like the certificate system of revenue authorities is liable to abuse, even in their hands. But the power of distraint should not be further restrained. A suit for arrears, in which nearly four years' rent may be claimed, with a prayer for attachment of the crops before judgment, would be preferred to the proposed course, requiring a full court fees duty for the value of the arrears, in which current arrears alone could, with difficulty, be recovered, and the order would not have the force of a decree rendering other properties and person of the ryots liable. It would be virtual abolition of the power of distraint, a consciousness of whose existence induces ryots to pay off current arrears.

Another feature of the Bill is that it gives exclusive jurisdiction to the revenue authorities in some of the most important matters. Act X of 1859 gave jurisdiction exclusively to the Revenue Courts in all matters. Act VIII (B.C.) of 1869, on the contrary, transferred the said jurisdiction bodily to the Civil Court; and now it is proposed to divide the jurisdiction, half and half, between the two classes of tribunals. There is no doubt that the class of enquiries to be made over to the revenue authorities can be better conducted by them than the Civil Courts. Yet one difficulty the people feel before the Revenue authorities is that they do not obtain that full scope for discussion of a point as before the Civil Courts. Further,

they labour under the impression that the views of the Revenue authorities sometimes change with the change of Government. It would therefore be better if the decision of those authorities were *primâ facie* and not conclusive evidence of a matter.

CHAPTER I.

Section 4.—Contract should also be saved as customs.

CHAPTER II.

The provisions are good, as the proprietors have no right to extend the area of khamar and nij-jote lands, and thus curtail the area for the growth of occupancy right even under the present law. Section 20 is not in keeping with the spirit of the Bill.

CHAPTER III.

There ought to be a section for forfeiture of a non-transferable tenure, if transferred.

It would be a great boon to the zemindars if all transferable tenures were declared liable to summary sale, like putnis, on an application to the Sub-Divisional Deputy Collectors.

Similarly, it would be a great relief to some of the unfortunate tenure-holders if they had the option of insisting upon the sale of the tenures for arrears in the first instance; for in case the tenure happens to be an unprofitable one, the landlord proceeds against the person and other properties of the tenant, instead of the tenure itself, and ultimately ruins him, as he has not the option of relinquishment, as the ryots have. If he had the option of relinquishing a tenure, it would answer the purpose equally well. I speak this from my experience in Backergunge.

CHAPTER V.

Sections 45, 47, 49. Are quite opposed to the terms of the permanent settlement, as it seems to me. Section 49 will, no doubt, confer right of occupancy on a large number of ryots, namely, all the settled ryots of section 45, in Behar, even if they have held the lands for a year only, but will as surely prevent them from getting one *chittak* of additional land in future, both in Behar and Bengal, without paying a heavy *selami* so long as a non-settled ryot may be had to take it up.

Section 50.—I have already dwelt upon several of its provisions.

Clause (c).—May be injurious to the ryots, as we see from the *zemba* system of Backergunge. Though it is now too late to prevent sub-letting, it ought not to have legislative sanction, except in cases where the ryots are minors, invalids, lunatics, females and the like.

Section 51.—One month's time is too short.

Section 52.—The landlord may not know the impending sale. There ought to be provision for a notice to the landlord in all cases of intended sale in execution of decrees held by third parties, as provided in cases of private sales.

Section 53.—One month's time too short, as there are many absentee landlords, whose local agents must take their permission for the purpose.

Section 54.—One month's time too short.

We see that, in making the right of occupancy transferable, the present privilege of relinquishment, which would be inconsistent with it, has been taken away. But, nevertheless, a large number of ryots, occupant or non-occupant, yearly find it convenient to relinquish their jotes. Henceforth such ryots shall continue liable for rent as long as the landlord chooses, though they may cease to hold the jotes, or find them unprofitable. At all events, henceforth they will have to pay a heavy sum, if they wish to relinquish their lands, as no purchaser will be found for such jotes.

CHAPTER VI.

No procedure has been yet laid down as to how the revenue officer is to determine whether the ryot, in any particular instance of lease, acted as a free agent, and whether the stipulated rent exceeds one-fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which ryots sell at harvest time; for if there is competition for land, the ryots will agree to the terms offered by the landlord; and if he comes to register the lease at all, in ninety-nine cases out of hundred he will admit all that is stipulated in the lease as correct, if he does not wish to go without the land, as we find in cases of registered bonds at exorbitant rates of interest. If there be, again, a counter-combination among the landlords, in these days of combinations, the matter will be still worse. The provisions cannot, at all events, come into operation until the expensive and laborious tables of rates and produce are prepared.

Section 60.—Here the law contemplates giving the occupancy ryots a right to the accretions to their holdings by alluvion, contrary to the provisions of section 4, Regulation XI of 1825.

Section 63, Clause (c) —To take price current at the harvest time alone would be unjust to the landlords. There should be an average price taken.

Section 66.—No provision against difference of opinion amongst assessors.

Section 70.—The minimum of 10 years and maximum of 30 years are too long periods.

Section 72 —The tables may ultimately be of no use to either the ryots or the proprietors, and yet the expenses are to be borne by both.

Section 74, Clause (2).—So the landlord is to be bound by his contract, though the ryot is not to be so

Section 78.—Ten years too long a period

Section 81, Clause (b) —Why so when some crops exhaust the land more than others?

Section 82.—This appears to be contrary to the teaching of the *Statesman* in several of its articles on Deccan Agricultural Relief Act, that the greatest blunder ever committed by the settlement officers was to have fixed the rent in money and not in kind, thus forcing the ryots to sell the produce at a time when the market is glutted with it, namely, just after the harvest time.

Section 83.—The price list would be of great value, indeed.

CHAPTER VII.

These provisions are good and just They should be extended to all bastu or dwelling-house land in town or village, but the existing contracts should be respected. The provisions are in keeping with the equitable principle of "stand-by."

CHAPTER VIII

Section 93, Clause 2, Sub-clauses (a) & (b) —Compensation for improvements may be allowable where a ryot is not bound to make them by the terms of his lease, as a ryot is not *per se* under any obligation to make them But compensation for disturbance cannot be allowed, as disturbance follows from the nature of his tenure, which he accepted with full knowledge thereof, and from his laches

I may here state that compensation for improvement may be allowed to occupancy ryots if they remain subject to eviction, as now, for non-payment of rent.

CHAPTER IX.

Section 98 —This will seriously affect the existing arrangements, and will be very injurious to the tenure-holders, who are, in many cases, bound by their contracts to pay rent to their lessors by even monthly instalments If contracts are to be set aside, sections 97 and 98 should be amalgamated into one and the same rule should be laid down as to instalments, whether payable by a ryot, sub-ryot, or tenure-holder.

Section 103 —The sanction of verification should not be taken away, the ground (*a*) being too broad and indefinite.

Section 109 —If damages are to be allowed in order to induce other ryots to be prompt in paying their rents, they lose much of their effect if they are to be awarded in lieu of interest, which is a simple compensation for the delay, and is not intended, and has not the effect of a punishment. The present law does not make it a substitute for interest, though it has been so interpreted in some old rulings. The counter-provision for awarding damages against the plaintiff (landlord) for vexatious suits in the present law, or section 110 of the Bill, is not a substitute for interest, but is intended purely as a deterrent.

Section 119 —This section seems to do away with the Burga or Adhibhag system. If not, the system should be expressly preserved as merely a labour contract.

CHAPTER XI.

Section 155.—The matter should not be left entirely to the discretion of the revenue officers

Section 159, Clause 2.—The Local Government is too inaccessible a tribunal.

CHAPTER XII

Preparation of records of rights is a good idea, and such a record, if properly prepared will confer a real boon on the country.

CHAPTER XIII.

I have already commented upon the proposed curtailment of the power of distraint.

I would leave the provisions of the present law on the subject as they are, and suggest only one improvement, namely, that when a landlord asks for assistance of the Court, there should be a regular enquiry after a short notice to the ryot, restraining him and others, if necessary, from reaping the produce in the meantime. The ryots should also be allowed to object to distraint immediately after they receive a notice from the landlord, or an attempt to distrain is made.

CHAPTER X, HEADING E

There seems to be an omission as to how the present co-owners of estates and tenures receiving rent jointly are to sue for arrears in case all of them do not agree to sue jointly, often in collusion with ryots. Certain decisions have laid it down that in such cases one co-owner may sue for the whole amount of arrears, making his co-sharers parties as co-plaintiffs. But provisions under this heading seem to lay down that in every such case a manager is to be appointed or a partition to be forced. Now, both these courses are expensive affairs, and it will be in the power of a big co-sharer to force the minor ones to appoint him their manager, or to bear the expenses of a manager appointed by the District Judge, and thus ultimately to part with their shares, most likely in his favour. They may well afford collecting their own share of rent if ryots consent to pay them that share separately. The joint Hindu family system makes co-sharers unavoidable, and it is also well-known what bitter enemies they at times are The

minor co-sharers are sure to go to the wall if they were not allowed to sue for whole arrears, as at present The omission on this point is liable to the misinterpretation of a covert attempt to aim a blow at joint-Hindu family system, so fostered by Regulation XI of 1793. The zemindars would fain have a law of primogeniture, but the courts are dead against it—*See* the celebrated case of Tagore *versus* Tagore.

CHAPTER XV.

Sections 211 & 212—To avoid delay both kinds of sale should be simultaneously advertised and held one after the other on the same day.

CHAPTER XVI.

Section 225—I do not see the justice of this provision. Are ryots objects of more care and compassion than minors and lunatics?

NUFFER CHUNDRA BHATTA,
First Subordinate Judge, 24-Pergunnahs.

No 1876 669L R, dated 18th July, 1883

From—Officiating Secretary to Government, Bengal,
To—Secretary to Government of India, Legislative Department

In continuation of my letter No. 1827-648L R., dated the 13th July 1883, I am directed to submit, for the consideration of His Excellency the Governor General in Council, the accompanying copy* of a report from the Commissioner of the Burdwan Division on the subject of the Bengal Tenancy Bill, 1883.

*No 339, dated the 22nd June, 1883, with enclosure.

A. P. MACDONNELL.

No. 339, dated Chinsurah, the 22nd June, 1883.

From—JOHN BEAMES, Esq, Commissioner of the Burdwan Division,
To—The Secretary to the Board of Revenue, Lower Provinces

In reply to your No. 351A, dated 29th March last, I have the honour to submit my report on the Bengal Tenancy Bill

2 I have already submitted two lengthy reports on this subject, the first of which commented on the Bill drafted by the Rent Commission in 1880, and the second on the amended Bill put forward by Government in 1881 Under these circumstances it will perhaps hardly be necessary at the present stage of the matter to enter into a detailed examination of each of the provisions of the present Bill, which, as the final outcome of much protracted and careful argument, may, in my opinion, be generally accepted as likely to prove workable and fair to all parties affected by it, though I am still very much in doubt whether any enactment of the kind is really required, except perhaps in Behar.

3. It is not of course to be expected that the Bill, even in its present expurgated state, will escape opposition, nor do I think such opposition altogether unreasonable. It is all very well to say that the framers of the permanent settlement specifically, and in set terms, reserved to themselves and their successors the right to interfere between the zemindar and the ryot, whenever such a step might seem necessary, for the protection of the latter; and that, though no such interference practically did take place during the sixty-six years that intervened between 1793 and 1859, yet that "it is never too late to mend," and that consequently we are going to interfere now The answer to that argument is that during all those years we have allowed men to buy zemindaries and tenures on the belief, fully justified by our actions, that no interference would take place, and that it is not fair to these persons suddenly to uproot the conditions, on the faith of which they have invested their money. I so far agree with this argument, as to think that, in any changes which may now be made, it is not sufficient to go back to first principles and base our enactment solely on what we understand to be the relation between landlord and tenant, as established by Lord Cornwallis' Regulations, we must go further than this, and take into consideration the present status and vested interests of the proprietary body whom we have called into existence, and whom we have during nearly a century allowed to acquire rights and privileges which are none the less deserving of respect now, because their growth and development were not contemplated by the statesmen of the last century.

4. I mention this point not as a peg on which to hang a long historical discussion, or an examination of the state of revenue law and its effect on the agricultural classes during the last hundred years. All that has been done over and over again, and by far abler pens than mine. But I mention it to shew the spirit in which I approached the discussion of the two previous Bills, and the nature of the test which I feel bound to apply to the present Bill. In other words, the question I ask myself as I examine one section of the Bill after another, is "does this provision deprive either landlord or tenant of any right or any status which he legally holds *at present*, whether in virtue of the terms of the permanent settlement, or in virtue of

any custom which the Government has tacitly allowed to grow up since that time?" We have nothing to do with the historical zemindar of 1793; if he ever existed at all, that is, if there ever was any class of men so situated as we are apt to figure them to ourselves, he exists no longer. We have to deal with the zemindar in the position which he holds in the present day.

5. This is the view which most officers and private gentlemen whom I have, from time to time consulted, take of the matter, and I think it is the only practical reasonable view to take. There is a great deal of sentimental talk about the woes of the ryot; and I venture to think that no one who knows anything of the incidents of my obscure career will suspect me, at any rate, of a tendency to overlook the claims of the ryot, or to side too strongly with the zemindar. But I cannot overlook the fact so ably urged by the Hon'ble Kristo Das Pal, that the Bengal of to-day offers a startling contrast to the Bengal of 1793; and that the wealth and prosperity of the country has marvellously increased—increased beyond all precedent—under the permanent settlement. There is much force in his remark that a great portion of this increase is due to the zemindari body as a whole, and that they have been very active and powerful factors in the development of this prosperity.

6. The ryot suffers from causes over which no Government can have any control; the country is over-peopled; and the intensity of the struggle for existence is due principally to this cause, and not to the capacity or bad management of the zemindars. Every one *will* marry, and *will* have heaps of children; no one *will* emigrate, a vast majority *will* grow nothing but paddy, and the poorest *will* spend in advance the earnings of ten years on a marriage feast or a religious ceremony. It is very doubtful whether any legislative measures will improve the condition of people whose manners, customs, and prejudices are so utterly incompatible with improvements as these.

7. *Section 3, sub-sections 3 and 5.*—The definition of ryot has been purposely left obscure. We are told that certain persons are not ryots, but we are not told who are ryots. It seems to be thought impossible to define a ryot in such a way as to differentiate him from a tenure-holder. It is undoubtedly difficult; but I am afraid, unless it is done, much greater difficulties will arise. The definition in the Rent Commission's Bill, section 3, was not altogether satisfactory, because, for reasons briefly stated in the report, no other test was applied than that of the extent of the holding, and limit was arbitrarily fixed at 100 standard bighas. The present Bill, in sections 14 and 15, also fixes an arbitrary line of demarcation between a tenure-holder and a ryot by making what are at present known as ryots, with right of occupancy at fixed rates of rent, into tenure-holders, so that, if this definition be maintained, we get an exceedingly simple definition of ryots by merely saying that all persons who hold land under a zemindar, except those mentioned in sections 14 and 15, are ryots.

8. This, however, introduces considerable confusion in another way, for it has never, as far as I am aware, been the custom to regard as tenure-holders persons who have a right of occupancy at fixed rates. Such persons are always regarded by themselves and others as ryots, and the adoption of the classification of the present Bill will very much modify our conceptions on this point, and introduce changes which will not be readily understood nor acquiesced in by the classes connected with land.

9. Where so many high authorities have declared themselves unable to define a term, it may seem presumptuous in me to offer any definition. It is therefore with some diffidence that I put forward the suggestion, that the practice, or, so to speak, the tacit understanding on the subject among the people generally, should be taken as the basis of a definition.

10. When a zemindar lets land to a tenure-holder, he considers that he is granting, and the tenure-holder considers that he is obtaining, the right to collect rents from a number of cultivators already actually in occupation of the land so granted. When, however, the zemindar lets land to a ryot, he grants, and the ryot takes, the permission to cultivate the land himself, it not being, at the time of granting the lease, actually occupied by cultivators. The ryot who thus takes land may subsequently, without ceasing to be considered by the zemindar and by himself a ryot, sublet portions, or even the whole of such land, but at the time of taking the potta the land is not in occupation of others.

11. This is, I think, the broad line of demarcation between "talukdar" and "ryot;" and if we use tenure-holder strictly for talukdar, this demarcation will practically hold good everywhere, with very few and unimportant modifications. It is the *intent* with which the land is granted and taken that shews where to draw the line; and the intent is clearly understood in all cases by the parties at the time the transaction occurs.

12. It is no objection to this to say that ryoti land is often let with *korfa* ryots actually on it, because the right of the *korfa* practically ceases with that of the ryot from whom he holds; and if he stays on, he does so by permission of the new ryot, who might, if he choose, consider the land as unoccupied and free of all incumbrances. I think if a definition of ryot, based on the above idea, were introduced into the Act, it would be found to meet most, if not all, cases. It might be formulated thus:—

(1) A tenure-holder is a person who takes land on lease from a proprietor with the intent of collecting the rents from the ryots; and against whom the proprietor has the remedy mentioned in section XV of this Act (sale).

(2) A ryot is a person who takes land from a proprietor, tenure-holder, or under-tenure-holder, with the intent of cultivating it himself or by hired labour, or of sub-letting it, and against whom the proprietor, &c., has the remedy specified in Chapter XIII of this Act (distraint).

13. If the difficulty is great of distinguishing between a ryot and a tenure-holder, it is equally great in distinguishing between a ryot and an under ryot, and we cannot rest contented with the definition of an under-ryot, given in sub-section (6), that "an under-ryot means a tenant holding land below a ryot," unless we know what a ryot is. What we must know, for purposes of settlement, and what the zemindar also must know for the same purpose, is, who is the person in whose name the jummabundi is to be made. Section 164 of the present Bill, indeed, contemplates that, in compiling a record-of-rights, which is practically what we know as a jummabundi, tenure-holders, occupancy rights, *basta* ryots, ryots, under-ryots, shall all be jumbled up together. But this will never do: something more definite will be necessary, unless the whole of our present system of settlement procedure is to be reversed, in which case a good deal of Regulation VII of 1822 will have to be repealed. Bengal Act VIII of 1869 is, I see, to be repealed; but Chapter XI of this Bill, as I shall notice further on, makes the same requirements as the Act does on settlement officers, in respect of defining the status of various kinds of tenants, so that I am afraid we shall not be able to get on without some definition of "ryot."

14. The matter would be made clearer by altering the definition of an under ryot, from one "holding land *below* a ryot" into one "holding land *from* a ryot." As it stands at present, it is doubtful whether the holding of a korfa ryot could be brought within the definition of an "incumbrance" in section 208.

15. If we get rid of the korfa ryot as an incumbrance, then the definition of the ryot, as the actual or presumable cultivator (presumable from the *intent* with which he took the land), would come in, and we should get the actual ryot on our jummabundi, and every one below him, *i.e.*, holding under him, would be omitted, or, if it were desirable to record them, might be put into a subsidiary jummabundi or ikwal.

16. In accordance with this view, howladars, aymadars, mandals, and all persons who obtained grants of waste land for the purpose of bringing them under cultivation and colonizing them would fall into the position of tenure-holders. This would, I presume, cover also the case of the jotedars of Northern Bengal, and to some extent also that of the talukdars of Chittagong. The present under-ryots in such estates would then become, to a great extent, ryots; but on this point I beg to refer to my remarks on section 50, further on.

17. Another point referring to this same definition is the restriction of ryoti land to land held for purposes of agriculture, horticulture, or pasture. This excludes tanks, which all over Eastern Bengal are let as ryoti holding for fishing purposes. It also excludes land let for building bazars. Something must be done about this latter class of land. In the Midnapore bazar cases, the High Court ruled that land let for building purposes unconnected with agriculture (*i.e.*, not *basta*, as defined in the present Bill) was not governed by the settlement laws, which only applied to agricultural land and homestead land connected therewith. But the subject still, so far as I am aware, remains unsettled, and if it is to be excluded from this Bill, it will require a Bill of its own to settle it. The only mention of it in this Bill is in section 208, clause (*c*), where such tenures are declared not to be incumbrances; but this does not provide for their being leased, or for recovery of arrears, or for ejectment, or enhancement, or, in fact, any of the conditions to which such lands are equally liable with agricultural lands. I reserve further remarks on this point till I come to discuss chapter VII of the Bill.

18. *Sections 14 and 15.*—I have already noticed that these sections turn an occupancy ryot at fixed rates into a tenure-holder. I see that this is said to have been done for the convenience of the draftsman. It is unfortunate that we hear so much of this person now-a-days. It seems to me that it is a matter of no moment at all whether he finds an Act easy or difficult to draft; that is his affair, and should not for an instant occupy the mind of the legislator, whose attention should be directed solely to the justice and utility of the law. The mechanical operation of putting an idea into plain English is beneath consideration. I venture to think that by turning the occupancy ryot at fixed rates into a tenure-holder, we are creating a state of things foreign to the ideas and customs of the people, and likely to give rise to much confusion.

19. *Section 21.*—I am disposed to think that the limit of 30 per cent. is too high, and that it should not be more than 20 per cent. I think, however, that, in a vast majority of cases, there will be no necessity for courts to apply sub-sections (3) and (4), as cases in which the customary rates payable by persons holding similar tenures in the neighbourhood cannot be ascertained must be very rare.

20. *Sections 27 and 28.*—This seems unnecessary. Under section 27 the transferor and transferee, or successor, may apply to the landlord for registration of the transfer. If he refuses, an application must be made to the civil court, which will apparently take evidence and decide the question. There seems very little use in giving the applicant the option of applying to the revenue officer, who can do no more than issue a notice, which, it is said, the landlord is "bound to comply with;" but it is not said how compliance is to be enforced. Why should the applicant not go to the civil court direct on the refusal of the landlord, just as the landlord has to do under section 33. The landlord who refused to register on the request of the applicant will not do so on a mere executive order of a revenue court under section 28, if there is no penalty attached to disobedience. And why is the revenue officer to assist the tenure-holder, while he is not to assist the landlord.

21. Moreover, section 28 does not give the revenue officer any power to enquire whether

there has been a transfer or not, nor is he authorized to listen to any objection the landlord may urge against registering. This section will give a certain amount of additional work to revenue officers without the slightest corresponding advantage to either of the parties.

22. The same remark applies to clause (3) of section 27. There is no use whatever in saying a man "shall do" this or that, or "shall be bound to do" this or that, unless some penalty is prescribed for disobedience. In this case the landlord shall give a statement in writing of the reasons of his refusal; ninety-nine landlords out of a hundred will habitually neglect to comply with this section; and if they do so neglect—what then? They do not suffer, for there is no punishment for neglect. The fines which the Board is authorized to prescribe would not, as section 35 at present stands, cover cases where a landlord neglects to register.

23. I think the increase in the rate of fee from two per cent., if notice is given within six months, to twenty per cent., if given over six months from date of transfer, is excessive. The maximum rate, it is true, ranges from Rs. 100 to Rs. 1,000, and this will mitigate the severity of the fine (for such it is) in some large tenures, but in the smaller tenures, the holders of which are generally poor, a fee of twenty per cent. will be very seriously felt; and as the use of having the transfer registered at all is not very clear to this class of persons, the result will be a pretty general neglect to register at all. The landlord will, in a great majority of instances, remain ignorant of the transaction; or will not care enough about the matter to apply to a court under section 33, and thus much of this portion of the law will remain a dead letter.

24. *Section 30.*—In transfers under this section, it should be provided that the court holding the sale shall give notice to the landlord, who otherwise might remain in ignorance of the transfer. So also in section 35 (1) the Board should be authorized specifically to make rules not only for the matters mentioned in that section, and for procedure to be followed, but for the enforcement of the duties imposed upon landlords by Part D of chapter III.

26. *Sections 36 and 42*—I do not see the necessity of incorporating the law regarding putni tenures into this Bill. It seems to have been taken as a matter of course by the Rent Commission that this should be done. If this view is to prevail, then, I think, the system should, as suggested by the Rent Commission, be extended to such under-tenure-holders, other than putnidars, as may choose to accept it by a written agreement. The principle that where there is no dispute, the process of recovery should be as summary as possible, is a sound one, and almost indispensably necessary at the present time, when courts are overcrowded with business. The Collectorof Midnapore also holds this opinion.

27. I would suggest also that, if the putni law is to be incorporated into the present Bill, the opportunity should be taken advantage of to make a few verbal alterations in that law. I would insert a section making it legal for a Collector to make over the duty of holding sales to a Deputy Collector, with the sanction of the Commissioner. Collectors have so many duties now-a-days that it hampers them very much to be obliged to hold these sales themselves.

28. Doubts also occasionally arise as to the exact meaning of the words in section 14, clause 2, of the putni law. A "talukdar may contest the zemindar's demand of any arrear." May he only contest the fact of the arrear being due, or may he bring forward other objections, such as that the zemindar is not a recorded proprietor, or that he is only one out of a number of proprietors, and therefore cannot apply alone to bring the taluk to sale, and other similar objections?

29. It might also be as well to substitute throughout the putni law the term "recorded proprietor" for the vague "zemindar," wherever it occurs.

30. As the Board are aware, questions have also arisen as to what is to be the actual date of sale, when, as often happens, the Durga Poojah holidays fall on the first day of Aghan. This doubt might be cleared up on the present occasion.

31. *Section 45.*—I think this section goes a great deal too far. It allows a man who has held land anywhere in an *estate*, no matter how often it may have been changed, to become a settled ryot; and a settled ryot acquires a right of occupancy in any land he may happen to hold on the 2nd of March last, so that, in the case of a large zemindary, say the Burdwan estate for instance, a man may come to a village from another village sixty miles off in that estate, take land there, and have rights of occupancy from a few days' possession.

32. Estates in Bengal are often very large and very scattered, and the various portions have nothing in common. Why should a man, who has lived for some years in the south of a district, acquire thereby a right of occupancy in land many miles off in the north, merely because the two places happen to belong to the same estate.

33. There may be some justice in the rule that a ryot who has lived 12 years in a village shall be considered a settled ryot. The village even in Bengal still preserves some sort of soliditary, the estate has none, and it would be certainly very unfair to allow a ryot to acquire a right of occupancy in a plot of land which he has held only for one year, in a village in which he is, to all intents and purposes, an outsider and a stranger simply on the ground that he has held land for twelve years in other disconnected parts of the same estate. Such a concession as this is not looked for by the cultivating class, is opposed to their own views and to the custom of the country, and would operate very hardly on the zemindar.

34. There is of course the counter consideration that unless some latitude is allowed in acquiring the right of occupancy, the zemindar can prevent its accruing by shifting the ryots

fields year by year. But I do not think the legislature meant to authorize the consequences which would result from the wording of this section as it stands. There is not only the difficulty of an estate containing a vast number of villages scattered widely apart, but also that of a large village containing portions of many estates. It is evidently not intended that a ryot who has held land in estate A for twelve years should be considered a settled ryot in estate B, merely because the two estates, or portions of them, are included within one and the same village.

35. Yet the use of the word village would lead to this result, just as the use of estate would lead to that mentioned above. I would suggest that it should be declared that when a ryot has occupied land for twelve years in a village which constitutes one entire estate, such occupancy shall make him a settled ryot of that estate; when the village forms only a part of an estate, such occupancy shall make him a settled ryot of that village only; when a village contains more than one estate, or portions of several estates, twelve years' occupancy should constitute a settled ryot of so much of the village as belongs to the estate in which he has held. Of course this would restrict the area in which the last-named class of ryot could acquire occupancy rights, but this does not matter. The occupancy right is a matter between landlord and tenant; and if the landlord's property is small, the tenant's area of selection must be small also.

36. *Section 50.*—It is contemplated in paragraph 41 of the Statement of Objects and Reasons that the right of sub-letting, conferred by clause (*e*) of this section, may in time lead to a state of things in which the bulk of the actual cultivators would be under-ryots; and this state of things is regarded as so far off in the future that it may be safely left to some future Government to deal with it.

37. But the Collector of Midnapore points out very truly that this state of things is actually in existence very largely in that district, and I apprehend that it exists much more extensively than is suspected in all districts, similarly situated to Midnapore, *i.e.*, in all districts which were, down to recent times, the wild uncultivated frontiers of the Mahomedan province of Bengal. It is in these places that we find the jotedars, howladars, mandals and the like referred to in paragraph 16 above. The illustration to section 4 of the Bill recognizes the custom that under-ryots may acquire a right of occupancy, but leaves the conditions under which such a right may be acquired undefined, and the under-ryots consequently unprotected. They hold under, or from, superior tenants, who have been recognized as having the status of occupancy ryots.

38. There are in Midnapore many thousands of these ryots whose forefathers have tilled the land they now occupy for many generations, and I agree with Mr. Wilson in thinking that there is no reason why they should be left unprotected. The Board have before them precisely this question in the case of the ryots of Hooda Bhetia, in which, in appeal from the Collector, I was forced, by what appeared to me to be the present state of the law, reluctantly to rule that the ryots had no status beyond that of mere "korfas."

39. The case is this:—A, some 60 or 70 years ago, got from the zemindar a lease of a tract of jungle. He then induced B, C and D to settle and clear the land for cultivation by giving it to them rent-free for three years. A and his successor have now been recognized as occupancy ryots, but that is no reason why B, C and D should not be protected in the same way as other hereditary cultivators. The defective state of the present law on this subject has certainly been productive of much hardship; for, as the Collector observes, "although these under-ryots are hereditary occupants of the land, they cannot prove the existence of a custom enabling them to acquire an occupancy right, and in fact the courts have more than once decided that, under the law as it stands, they have no such rights."

40. Mr. Wilson would insert a provision to the effect that an under-ryot, who for five years consecutively cultivates the same land, shall acquire the status of an ordinary ryot, unless during any part of that time he has held under a lease for a fixed period. It would, I think, answer the purpose equally well if it were provided that, on a person whom we now call a ryot becoming (as he would under sections 14 and 15) a tenure-holder, the ryot's holding under him should, if they fulfil the above conditions, be held to have acquired a right of occupancy.

41. *Section 56.*—This section has given rise to much discussion. It is urged that, with the great facilities now granted for the acquisition of occupancy rights, it is only fair to the zemindar that he should have a chance now and then of extinguishing such rights. But the object of the Bill is avowedly to take away all such chance. Every possible obstacle is put in the way of a zemindar's preventing the growth of occupancy rights; and such rights will consequently grow inordinately; and not only will they grow, but once established, they must remain for ever, unless the landlord keeps the land in his own hands.

42. Here there is some confusion in the law; section 47 provides that no occupancy right shall accrue on land held by any person as owner: one would suppose that when a landlord exercised the right of pre-emption and bought a ryot's holding, he would thenceforth hold it as owner.

43. Yet the sections on pre-emption and section 56 speak of the ryot selling his "occupancy right," and the landlord purchasing the same. What is this but selling and purchasing the land itself? I do not see why, if the landlord thus purchases the land, it should not be open to him to extinguish the occupancy right. In fact, under section 47, that right would be extinguished by the mere fact that he, the owner, purchases it. But to prevent this conse-

quence, the fine distinction is introduced, that he, the owner, holds it not as owner, but as an occupancy ryot under himself. This, I think, is very hard upon the landlord. Ordinary ryots with no occupancy rights, though by no means sufficiently cared for in chapter VIII of the Bill, are yet placed in such a position that no deterioration of the status of the cultivating class would result from the partial extinction here and there of occupancy rights. Under section 119 no ryot can have his rent raised to more than five annas of the value of the gross produce of his land, and he cannot be ejected without elaborate proceedings. Surely this is protection enough for any ryot, unless it be deliberately intended to make all zemindars mere annuitants, in which case we deprive the highest class in the country of all incitement to take an interest in the welfare of their tenantry; we turn them into drones, and, in a vast number of instances, into paupers. It is all very well to have a substantial peasantry; but I am not one of those who wish to see this end attained by sacrificing the nobility and gentry of the country.

44. With their estates held by ryots, setting at what will be virtually, in many cases, fixed rates, and with land which, when once occupied by a ryot long enough to give him a right of occupancy, carries that right with it to whosoever may hold it hereafter, the zemindars will cease to have any interest in their estates at all. The privilege of pre-emption ceases to be of any value; for why should a zemindar buy up the tenure of a ryot unless it be in order to extinguish the right of occupancy? He will not be led to use his right of pre-emption merely to exclude an obnoxious purchaser, for his interest in the land will be so slight that it will not matter to him who purchases it.

45. Moreover, as pointed out by Mr. Reynolds in his speech in Council, the landlord will by this provision be led to keep the land in his own hands, thus virtually turning it into khamar. The whole section seems to me to involve an erroneous idea. It is not the land that acquires rights, but the man who holds it. If he holds it for a certain term of years, equity and custom demand that he should acquire occupancy rights in it. But one fails to see why the land itself should carry those rights with it when it passes into the hands of a man who has done nothing to earn or merit those rights.

46. *Section 62.*—The preparation of tables of rates will be, in all places, a difficult and, in many places, an impossible task. It has been tried experimentally in several districts, and it appears from the debates in Council that the officers selected for the task do not think it is likely to be generally successful. This is to a certain extent admitted in paragraph 51 of the Statement of Objects. It is there apparently implied that tables of rates will only be prepared in districts where such rates are already recognized and in existence. I think if the idea of having such tables is not abandoned altogether, it should be stated in the Bill that they will only be made in such districts, so as to make it impossible for applications for the compilation of a table of rates to be sent up from districts where the materials for such a table do not exist.

47. *Section 70.*—On the question of finality being given to tables of rates under this section, the Collector of Midnapore writes:—

"I desire to represent the extreme danger involved in irrevocably fixing for a term, even of ten years, a table of rent rates. It is often found necessary in this and other provinces to revise the work of careful experienced settlement officers, with reference to facts gradually brought to light by experience; but the procedure of the Bill would give absolute finality to an order of Government sanctioning a table of rates. In considering this point, it should be borne in mind that the Board and Government would have no independent knowledge of the facts with which they had to deal, but would be wholly, or almost wholly, dependent upon reports submitted to them by the officer who had framed the table of rates, and who could hardly fail to be prejudiced in favour of his own handiwork. Nothing is easier than to deduce logical conclusions from figured statements; but it is far from easy to ascertain (for instance) the true average outturn of a particular class of land.

48. I quite agree with Mr. Wilson; the illustration which he gives fully confirms his remarks. He points out that in the Midnapore settlements Mr. Price came to the conclusion that the price of paddy would probably never fall below one rupee a maund, and certainly never below 12 annas. The Board then went into the same question, and from the police returns of the selling prices at the principal marts from 1872 to 1877, arrived at rates, in most cases, lower than Mr. Price's. The present Collector has gone over the same ground in the same manner from the price lists of 1881 and 1882, the result being two annas, or even more, below the rates arrived at by the Board. Prices may rise again, or they may not; but the above example shows conclusively to my mind that it would be dangerous to fix any table of rates, no matter how carefully prepared, for so long a period as ten years.

49. Seeing then that, before a table of rates can be prepared at all, an enquiry must first be held to ascertain whether the district or area is one in which the materials and conditions for compiling such a table (recognized rates or uniformity in the classes of soil, &c.) exist; that the cost of this enquiry and of the preparation of such a table, if found practicable, will be thrown upon landlords and ryots jointly; that there will still remain many parts of the country where no such tables can be made; that even where made, they will not continue to represent actual facts for more than one or two years together; and that the only object of having such tables at all is to simplify the work of the courts in enhancement cases, I must express my opinion that, to use a common saying, "the game is not worth the candle."

50. As a mere matter of administrative economy, it would be far cheaper to appoint more rent-suit moonsifs, and let them work out the rates as they do at present, than to employ a large number of highly-paid revenue officers (they must be highly paid, because they must be possessed of much ability and experience, and such officers are only found in high grades of the Covenanted and Uncovenanted Services) to prepare tables, which, when prepared, will be of comparatively little value. I think also the people themselves will very much prefer having their cases decided each on its own merits, to having them summarily disposed of by reference to a table of rates.

51. *Section 74.*—Where there are no tables of rates, the courts are to proceed, in enhancement suits, on certain lines which are apparently intended to be a decoction of all the case law on the subject since Act X of 1859. With regard to section 74, clause (3), I may remark *en passant* that I do not quite see how the increase in the average price of produce in any locality, or in any of the usual markets, can be brought about by the sole agency or at the sole expense of any individual ryot. Excluding temporary or casual increases in the selling price of agricultural produce, such as famines or campaigns, the increase is, as far as I can see, invariably due to causes operating on a much too large a scale to be affected by the actions of any individual ryot, or even of all the ryots of a village acting collectively. It is brought about by opening up new roads, railways, or canals, or by the establishment of permanent trade relations with foreign countries, and the like.

52. But passing by this point, I find that in section 75 the principles by which the court is to be guided in enhancing rents are practically the same as those by which it would be guided in a case where there were tables of rates. We have first the limit of one-fifth of the annual value of the gross produce. Subject to this we have some very simple rules for dividing the increase between landlord and tenant. In 92 cases out of a hundred the issue will turn on clause (*c*), and so we get back again to the old rate of things.—Issur Ghose's case and Act X of 1859. The facts to be ascertained by actually recording evidence are very simple, and I do not think a moonsif would have much more difficulty in deciding a case where there was no table of rates, than one where there was a table, especially as the law allows of going behind the table in certain cases. Here, again, I find an argument against the adoption of the table of rates with all its concomitant inconveniences.

53. As to the one-fifth limit I see no great objection, though I do not think one-fourth would have been too much. I find in Jellamootha the percentage of gross value taken as rent ranges from 19 per cent to 27 5, the general average being 19 8. In Majnamootha it ranges from 20 3 to 30, the average being 23 5. Many of the pergunnahs in these estates are, however, very fertile, and as the highest average hardly rises to one-fourth, perhaps one-fifth, for the whole of Bengal, is a safe limit to fix. It is always, however, very unsatisfactory to lay down hard and fast lines for so vast a tract of country containing such widely differing kinds of soil and conditions of fertility.

54. As regards section 77, I can only repeat what I said in my report on Mr. Reynolds' Bill, that if it is fair to decree enhancement at all, it should be decreed at once. It is impossible for a court to say that land is progressively improving, and that it will go on improving at the same rate of progress. It also seems somewhat contradictory for a court to declare in the same breath that the land is fairly liable to enhancement, and yet that enhancement would cause hardship to the ryot, and therefore cannot take place all at once. This is another instance of that extreme tenderness towards the ryot, which does not seem to be felt when dealing with the landlord.

55. *Section 79* is another instance of the same tenderness. What is just for the zemindar is just for the ryot; and if enhancement is hedged in and fenced about with all the conditions of section 74, reduction should be similarly hedged in, and it should not be merely left to the court to pass any order if thought fit. This looks very much as if, when the zemindar's pocket is to suffer, it does not matter; but when the ryot's pocket is to suffer, it matters a great deal, and you can't be too careful.

56. *Section 80.*—This is not of much use. Pasture lands are not, as far as I know, leased to individual ryots *as* pasture; I am sorry to say they are often so leased with a view to their being turned into arable; and in this way all the pasture land in the country is being swallowed up by zemindars, and the cattle are deteriorating visibly for want of proper grazing land. I should be glad if Government could see its way to preventing this. Hitherto we have been generally under the impression that a zemindar might, to a very great extent, do what he liked with his land, so long as he paid his revenue punctually; but in the present day we have outlived so many old-fashioned prejudices, that there would be no great shock to our feelings if this one followed the rest. We are going to fix rates of rent by tables of rates; we even contemplate entering on a permanently-settled estate, and settling it over again (all but the revenue, which is to remain unaltered, whatever may be the result of our new settlement); and under these circumstances it would be merely "straining at a gnat and swallowing a camel" if we were to allow our hands to be tied in such a matter as the preservation of pasture land.

57. Even if it be admitted that the framers of the permanent settlement reserved to themselves and their successors the right to interfere for the protection of the ryots, it has always been admitted that the zemindar was to be allowed to make his own arrangements for bringing into cultivation waste land. The difficulty about pasturage has arisen, I believe, from the fact that anciently there was abundant waste land where the ryots grazed their cattle

as they pleased; no specific area was therefore set aside as pasturage or grazing land distinguished from the waste land. In course of time, therefore, the zemindars have brought under cultivation all the land not already under the plough, and pasturage has disappeared under the pretext that it was waste, and was being reclaimed as such. It would, I fear, be impossible to throw back into grazing land any land already brought under the plough and leased to ryots; but in places where this process has not gone so far, it might be enacted that a certain proportion of land in each village should be reserved as pasturage and left free for the cattle of all the ryots to graze on, the conversion of existing pasturage, beyond a certain proportion, into arable being forbidden by law. I do not think this would meet with much opposition.

58. *Section 83.*—This will be a very difficult proceeding, not because there will be any difficulty in finding what are the market prices on any given date, at any given place, but because in the present day communication is so easy and rapid between one part of the country and another, that there cannot, in many places, be said to be any one market price all harvest time. The harvest time may last six weeks; and during that time, especially in places in telegraphic communication with Calcutta, Madras, and other large towns, prices will go up and down twenty times. Long before the price list has been sanctioned by the necessary authority, it will have ceased to be correct. All that can be done is for the Collector to record, day by day during the six weeks of harvest, and for another six weeks afterwards, till the crop is all disposed of, the daily fluctuations in the principal markets. At the close of this period he may tabulate and arrange his figures and strike averages, and the return will then be of some use in future years as a guide to what the prices were in the year to which it refers.

59. *Section 85.*—With reference to the remarks made in paragraph 17 of this report, I observe that in the Statement of Objects, paragraph 70, it is mentioned that all provision regarding land used for building purposes has been purposely omitted from the Bill. I regret much that the weighty remarks on this subject, in paragraphs 108 to 112 of the Rent Commissioners' report, have been passed over with only this cursory notice. I need hardly point out that all the land in the country (except waste land and petty patches of revenue-free land here and there) belongs to, and is included within, the limits of one estate or another. Why should a zemindar have no law to guide him when he wishes to find a village or a town? Why is there to be no provision made for cases where capitalists wish to obtain land for building a great factory? The whole subject of this Bill is, as I have said more than once, looked at too exclusively from the ryot's point of view, and not even the ryots in the widest sense of the word, but from that of the ryot who tills the soil, and him only. The omission of all provisions regarding land used for building purposes is calculated to retard the development of the country and to re-act unfavourably even upon the ryot, for whose welfare we are so solicitous.

60. The "substantial peasant," whom it is so much wished to create, has a far better chance of coming into existence and continuing to live and prosper if he has marts for his produce all round him. What retards the progress of the peasantry as much as anything is the long and weary distance which so often separates him from the nearest place where he can get money for his produce. Whatever renders it difficult or disadvantageous for the zemindar to establish marts on his land, or to allow of the erection of better houses than the mud huts, or bamboo or thatch hovels, which now form the peasant's or ordinary dwelling, in the same degree keeps back not only the commercial development of the country, but also the material comfort of the peasant, and consequently also his striving after improvement. If the subject of letting land for purposes other than agricultural be not treated of in its proper place in this Bill, the Bill will be imperfect, and a most urgent and all-important feature in the question of the tenure of land will be left in a state of dangerous chaos.

61. *Section 88.*—I agree with Mr. Reynolds in considering it a mistake to call a ryot, who has no right of occupancy, an "ordinary" ryot. In the earlier part of this report I observed that we had not yet succeeded in defining a ryot at all; and when you cannot define the substantive, it seems strange to prefix to it the adjective "ordinary."

Section 89.—I also object to the terms of this section, leaving the "ordinary" ryots' rent to be fixed by contract between him and the landlord, subject only to a maximum, which it is truly observed will be evaded at every turn.

62. The privilege of the occupancy ryot is not necessarily, at least it ought not to be, a more favourable rate of rent than other classes, nor ought it to consist in greater protection at the hands of the law. It ought to consist merely in a tighter hold on his land in a right to hold his hand in spite of every one, so long as he pays his rent and uses the land for the purpose for which he got it.

63. The "ordinary ryot" ought to have all these privileges too, except fixity of tenure. He is a tenant-at-will, unless he likes to stick to his land long enough to give him occupancy rights; and this ought not to be difficult for him to do, now that every possible obstacle is placed in the way of zemindars stopping the accrual of such rights.

64. *Sections 91, 92, &c.*—The procedure for enhancement in these sections seems to me very faulty. There is here none of the careful weighing of considerations laid down for the occupancy ryot in chapter VI. The landlord may enhance, with or without reason, up to the limit of section 119, five annas in the rupee. Then he may serve a notice on the ryot, who must then either pay or go. In the suit for his ejection, to be instituted under section 93, the

court is not to enquire whether the enhancement is fair or not. The case is to be tried in the most summary manner, and unless the ryot agrees to pay the enhanced rent, the court must pass a decree ejecting him. I really do not see why such tender care should be bestowed upon one favoured class of ryots, while the other is left utterly unprotected. The protection granted to the occupancy ryot is so complete, and any attack on him is attended with so much risk and difficulty, that the zemindar will naturally turn his attacks against the "ordinary" ryot, whom the law does not deign to protect, and will effectually prevent him, at any rate, from acquiring occupancy rights by ruining him long before he has had time to do so.

65. *Section 93*, clause (*a*), will be inoperative. Every one knows that tenants-at-will do not make improvement. But I agree with Mr. Reynolds, and with the unanimous opinion of all whom I have consulted, that clause (*b*) is absurd. If you start by defining a man as one who has no right of occupancy, why should he be compensated for being turned out if he does not comply with the terms of the contract by virtue of which alone he holds. The law expressly says that the "ordinary" ryot has no rights in the land he tills, save such as he may acquire by virtue of some contract or agreement with landlord. It is of the very essence of his position that he can be turned out, and if so, what injury is done him when he is so turned out? It is very sad to see this, one of the most pestilent inventions of the *anti-landlord* party in England, of that noxious class who believe that *la propriete cest le vol* introduced into this country.

66. *Sections 97 to 99.*—Some objections have been raised against this Part B. I do not share them. I think it is very necessary that something should be done, not so much to fix the dates of ryots' kists, which are on the whole very fairly paid already, but to limit the number of kists. On more than one occasion recently I have met with cases in which a zemindar or putnidar had arbitrarily fixed 12 kists in the year; and, in order to harass his ryots, was in the habit of suing them in the moonsif's court separately for each kist, thus bringing twelve suits in one year against a single ryot. It should, however, be stated who is to move the Board to exercise its powers under Part B. If the Board waits for either zemindars or ryots to apply to it, I fear it will wait a long time. The initiative should rest with the Collector of the district, who should report through the Commissioner for the Board's orders.

67. *Section 100.*—I approve of this section entirely. I would, however, repeat the recommendation, which I made in reporting on the Bengal Bill of 1881, that the Board should have power to prescribe a form of receipt, as zemindars through ignorance or carelessness will be very apt not to include all the necessary particulars in the receipts which they may give.

68. *Section 101*.—I adhere to my former objection to this provision. It will be widely and generally, if not universally, evaded; such a statement is not, as a general rule, required by ryots. Those who desire to be on good terms with their landlords are careful to avoid asking for any information. If a ryot comes asking for information about the state of his account, it is generally assumed that he means litigation, and the zemindar prepares himself accordingly, and bad blood is caused. It would be far better to provide that zemindars shall *keep* a register containing all those particulars (many of them keep nothing of the kind); this would be a great step in advance, and that if a ryot at any time wanted a statement, which might happen once or twice in his lifetime, the zemindar should be bound to give it; and if he did not, the ryot could apply to the Collector or the civil court to compel the zemindar to give it. It would be useless practically to rule that such statement should be given free of cost, because whatever the law might say to the contrary, the zemindar's *amla*, if not the zemindar himself, would be sure to demand some fee or present, and the ryot would, on the whole, rather give it than not, in order to keep on good terms with his landlord and the *amla*, who have his fate in their hands.

69. *Sections 103 to 107.*—I object to the wording of clause (*a*). It would be very dangerous to allow any tenant who, without just cause, or for the deliberate purpose of making mischief, chooses to fancy that he "has reason to believe" that the zemindar will not receive his rent and grant a receipt to pay it into court. The present law (section 46 of Act VIII, B C., of 1869) requires that the tenant shall first make a tender of the rent. I think this provision ought to be retained. I know it has been said that a ryot is often afraid to go to the zemindar's cutcherry with his money, lest it should be taken from him and no receipt granted, but such cases are in my experience more imaginary than real; and as between man and man, it is surely only fair that the recipient should have a chance of taking the money and giving a receipt before he is put to the trouble of going to a distant court to get it.

70. When a ryot is afraid of violence or unfair treatment at the zemindari cutcherry, he always takes the precaution of taking a number of other ryots with him, who can give evidence in case of his being ill-treated; and a zemindar, who is capable of such conduct, is always so unpopular with his ryots that any one of them can get plenty of others to stand by him in such a case. If we let any ryot, who thinks he "has reason to believe" that the moon is made of green cheese, or any other of the wonderful things which make up a ryot's belief, especially at times when he is at feud with his landlord or neighbour, deposit his money in court, much unnecessary business will be entailed on the courts, and much hardship on zemindars.

71. The wording of the remaining sections of Part D seems to be intended to authorize

Collectors to receive deposits; but if the suits lie in the Munsif's court, the deposits should be made there also to avoid delay and correspondence in ascertaining whether the money is really in deposit or not.

72. *Section 119.*—I have much doubt as to the propriety of fixing a definite proportion of the produce as the ryots' rent. I know that very much has been said in favour of such a measure, yet as it seems that this section is intended to have retrospective effect (though the wording is not very clear), such a provision would lead to a very general disturbance of existing engagements. Is it meant that if a ryot is at the present moment paying a rent which is in excess of five annas in the rupee on the value of the produce, he shall, as soon as this Act comes into force, be entitled to have his rent reduced to that proportion? If so, I am not prepared to say to what extent the rents of ryots all over Bengal will not require reduction. It is one thing to lay down a general principle and quite another to insist on its being immediately applied everywhere throughout a vast country. I think it is far better to leave such matters to be decided by mutual consent and local custom. The ryot is in many places far stronger than seems to be supposed, and with the liberal amount of protection now to be given him by the Bill, will be well able to hold his own against any excessive demand on the part of his zemindar. At any rate, if it be thought that the welfare of the ryot demands some such limit as this to his rent, the rule should not be made retrospective.

73. *Section 126.*—Instead of ruling, as is done at the close of clause (2), that no work shall be deemed to be an improvement which diminishes the value of any other part of the estate, it would be fairer, I think, to say that it shall not be deemed an improvement if it diminishes the value of any other part of the estate to a greater degree than it improves the part worked upon. The estate in this respect being regarded as an unit, an improvement on one part expressed by fifty, which diminished the value of another part to an extent expressed by twenty-five, would still be on the whole, as regards the estate at large, an improvement. I do not, however, attach importance to this chapter, as I fear, from what I see round me, we are yet some way off from the day when ryots of any kind will make improvements to any great extent at their own expense.

74. *Sections 133 to 138.*—These are mostly already in force. There seems to be some obscurity, however, about rent-free and revenue-free lands. In section 92 of the Statement of Objects and Reasons reference is made to a letter from the Government of Bengal, in which it is remarked that a landlord cannot measure "lakhiraj," though a lakhirajdar may be holding under cover of his grant more land than he is entitled to. The Government thought landlords should be entitled to measure such land, and there can be no doubt of the correctness of this view. To remedy the defect, however, section 133 of the Bill gives the landlord power to measure "rent-free" lands, but does not (if I understand the wording rightly) empower him to measure "revenue-free" lands. Both classes of land are commonly included under the expression lakhiraj, which, however, strictly only applies to the latter, and probably the Government of Bengal meant to include "revenue-free" lands. These lands very frequently are entirely surrounded by zemindari land, and "revenue-free" holder is quite as much given to encroaching as the humbler "rent-free" holder. The law should enable a zemindar to proceed against the former as much as against the latter, provided the lands were an *enclave* in, that is, entirely surrounded by the zemindar's lands. Probably some alteration in the wording of this section would be advisable.

75. *In Section 138.*—I think the appeal from the Collector should be not to the District Judge, who, from his official position at least, has no means of judging what is the correct standard of measurement, but to the higher revenue authorities, who, as administrators of all matters relating to the revenue, and custodians of all the records pertaining to the subject, are the best persons to decide what is the proper standard in any part of the country.

76. As we are by way of providing Bengal with all sorts of records of matters which we have hitherto been brought up in the belief that we were not concerned with, it would, I think, be as well if, along with our records of rights and such like matters, we should make once for all an enquiry which would enable the Board authoritatively to declare what was the standard in each pergunnah or other area throughout the country.

77. *Section 141.*—Here I am in doubt whether the provisions of "merger" are not in opposition to those of section 56. If a landlord acquires an occupancy right in land by any process, would not the principle of merger cause the occupancy right to merge in that of the landlord, so that on re-letting the land the new ryot would not, as provided in section 56, acquire an occupancy right, that right having merged and so become extinguished. I am not sufficiently familiar with the meaning and working of this new principle of "merger" to answer this question. I think it ought to do so, as I have said in my remarks on section 56.

78. *Sections 142 to 148.*—It is only necessary to say that I fully approve of this Part E, and that it introduces a much needed and extremely valuable reform. There is, I think, one small omission, which might be supplied. It is of course understood that during the incumbency of a manager all power of interference shall be taken away from the co-owners, and that during that period it shall not be lawful for them to receive rent or grant leases, and that all receipts given and leases granted, save by the manager, shall be null and void, and that the manger, and he alone, shall exercise all the powers and functions conferred by the law on landlords. I have known cases in which co-owners have tried to collect rents and do other acts indicative of ownership behind the back of a manager appointed under Regulation V of 1812.

79. *Section 151.*—The procedure of chapter XI virtually amounts to making a regular settlement of part or the whole of a permanently-settled estate. It involves not merely the determination of the rents, but the preparation of a jummabundi; in fact all the proceedings of an ordinary settlement, excepting only the fixing of the revenue. And in some respects this procedure gives more power to revenue officers than do the existing settlement laws. This is stated to be intentional, and the procedure has been invented with a view to removing from the civil courts the power they now exercise of reversing the decision of the revenue officers on many points in a settlement, accordingly Bengal Act VIII of 1869 is repealed.

80. I personally, as a revenue officer, naturally approve of such a step. It may be foreseen that with such a powerful engine as this in their hands, the executive authorities will in future abandon the procedure of the settlement laws entirely in all cases of Government estates or wards' estates in favour of procedure under section 151, clause (*c*), and I fancy few revenue officers will avail themselves of the permission to refer to the civil court given by section 155. By section 227 (*a*) the Local Government may confer on revenue officer employed under chapter XI all the powers of a civil court in trying a suit; and as these powers include those of summoning and examining witnesses, compelling production of documents, and in fact do everything that is necessary to the full understanding of the matter at issue, I do not see why a revenue officer, say a Deputy Collector, should not be quite as competent to decide any matter that may arise as a munsif. The munsif can do no more than the Deputy Collector is empowered to do. He can only summon and examine the same witnesses, compel the production of the same documents, hear the same arguments from pleaders. His materials for forming a judgment will be precisely the same as those of the revenue officer, and consequently unless we admit that the munsif is *per se* a better man than the revenue officer, which is a hazardous assumption, there is not the slightest necessity for any reference to the civil court under section 156. The revenue officers will, therefore, henceforth pursue their course in settling an estate in peace without having the fear of interference by the civil court constantly before their eyes.

81. All this is very pleasant and gratifying for us, revenue officers. I do not, however, quite see how it is to be reconciled with the remarks in the preamble to Regulation II of 1793, which, after stating that "all questions between Government and the land-holders respecting the assessment and collection of the public revenues, &c., &c., have hitherto been cognizable in the courts of mal adalut or revenue courts," goes on to say that "the proprietors can never consider the privileges which have been conferred upon them as secure, whilst the revenue officers are vested with these judicial powers." This is not forgotten by the zemindars in the present day, and it is to be feared that the provisions of this chapter will excite great oppositions from them; indeed, this is already the case; and this chapter is by many zemindars looked on as an infringement of the principle laid down in the above regulation, which has for nearly a century been one of the fundamental principles of British rule.

82. It may be said that the powers conferred by this chapter can only be exercised at the request of the parties interested, or to preserve the public peace, or in estates where there is either permanently or temporarily no zemindar in existence.

83. As to the first of these cases, I would observe that the chapter can be brought into operation not only without the consent of the zemindar, but very much against his will. The vague expression "a large proportion of the tenants" may easily cover case of collusion among a certain portion of the tenantry got up by disaffected persons; and as the total number of the tenantry on an estate can, prior to proceedings under this chapter, be only vaguely guessed at, the Collector, with whom will rest the initial duty of representing the case to higher authority, may easily be misled into taking a comparatively small number of disaffected persons for a "large proportion of the tenants."

84. Then again, clause (*a*) of sub-section 2 of section 151 is defective in an important point. Surely it is not intended, as the words as they now stand imply, that any large body of tenants by merely making an application and depositing costs should cause an estate to be brought under settlement. They should certainly show cause for their application, and the landlord should have an opportunity of showing cause against the application, and the Collector's decision should be appealable, and no formal representation to the local Government should be made, except by the Board, and after all appeals have been decided.

85. It is no light thing to enter on to a permanently-settled estate and turn it upside down, with the result, perhaps, of crippling the landlord's resources for one lifetime or more. This clause must be very carefully fenced and hedged to prevent much injustice. It must be remembered that it is not always a case of the righteous arm of Government interfering to rescue a helpless flock of ryots from the fangs of a ravenous landlord. There are cases, and not so few as some would persuade us, in which a helpless landlord requires to be rescued from a combination of crafty and irreconcileable ryots. Eastern Bengal would furnish many such cases.

86. I would say that an application under clause (*a*) must be made by not less than two-thirds of the rent-paying tenants; that a local enquiry should be held to verify the signatures, and to count the tenants, so as to ascertain that the true proportion had signed, and had signed knowing what they were signing. If this was satisfactorily settled the Collector should then hold an enquiry as to whether there existed any valid reason for making a settlement, and at this enquiry both parties should be heard, the ryots and the landlord.

If the Collector found that there was cause, as well as if he found that there was not, he should report to the Commissioner, who should hear appeals against the report from either side, and should then report to the Board, who might again hear appeals, and either quash the whole proposal, in which case their decision should be final, or report to Government in its favour, in which case orders would issue under the section.

87. The same procedure should be followed in case where a landlord seeks to put in force this clause, though I presume such cases will be very few and far between. On this point, however, the Collector of Midnapore observes very justly that enhancement made under chapter XI "will have one great advantage over enhancement effected by a landlord dealing separately with individual ryots, in that it is more likely to be equitable." But as he also remarks, it is open to the serious objection that such a step will excite the hostility of the whole of the ryots, and lead them to band together in opposition; and this opposition will be the more serious, because it is principally in districts like Pubna and Furreedpore, where the ryots are particularly difficult to deal with, that applications will be made under this clause by zemindars.

88. It may be expected that during the progress of a settlement thus originated, the ryots will stand aloof and give as little assistance as possible. Recent events in Midnapore have shown us what is the result of these tactics. When the jummabundi is prepared and issued, it is suddenly discovered that it is full of errors, both as regards classification of soil, area, names of ryots holding specific plots, and the like. When this jummabundi, full of errors, is put into the zemindar's hand, he will find himself quite unable to collect according to it. He will then either make default in paying his revenue, and so get rid of an unprofitable estate by throwing it on the hands of Government, or he will have fair cause for asking Government to undertake the management for him: either of these courses would be very embarrassing.

89. These remarks are based on the supposition that any zemindar who applied under this clause would do so with the object of getting his rents raised. One cannot conceive that he should make the application with any other object. It is not for the interest either of Government or of the mass of the population that rents should be raised to any large extent, and Government would not be justified in interfering on the application of a zemindar for such a purpose. I therefore think that if a zemindar wants to raise his rents, the courts are open to him, and he should have recourse to them, instead of being able to proceed as provided in this section.

90. As to the second cause of interference—the preservation of the public peace—clause (*b*) appears to cover the same ground as the Agrarian Disputes Act V (B.C.) of 1876, which, as far as I am aware, has never been made use of anywhere since it was passed. There would therefore seem to be very little use in enacting clause (*b*). When a serious dispute arises, it is the duty of the Magistrate to preserve the peace, which he has generally no difficulty in doing, while the matters at issue are being decided by a competent court. Ryots are many, landlords few; a disturbance of any magnitude is necessarily got up by the ryots, who would thus have it in their power to force the landlord against his will into submitting to the procedure of this section. This ought not to be. I do not suppose it would occur often, seeing how entirely the Agrarian Disputes Act has remained a dead letter, but this clause goes further than the Act, and might be taken advantage of by designing persons.

91. The third cause provided for by class (*c*) is a valid one, and will be of much use.

92. *Section 164.*—If undertaken gradually and systematically by picked officers throughout the country, and confined simply to *recording* with no attempt at deciding disputed points, this record-of-rights would be extremely valuable. It will not, however, ordinarily be called for either under clause (*a*) or clause (*b*) of section 164 (2).

93. It should, I think, merely put on record such facts as are undisputed; indeed section 164 provides for no decision of disputed facts. If the class to which a tenant belong, or the amount of land held by him, or the rent payable be disputed, the recording officer should merely enter "disputed." Subsequently, if a court called for a copy of the record for reference in a case, and decided the disputed point, it should issue a precept to the recorder or the Collector, directing him to insert the facts affirmed by the decree in his record. The record would thus in course of time get complete.

94. There should be some provision in this chapter authorizing the Board or Government to confirm the record by notification, and to make rules for its form and for its safe custody, and for granting copies of extracts from it.

95. *Sections 166 to 187.*—I approve of the retention of the power of distraint under its present modified form. I think, however, that much, if not the whole, value of distraint depends upon the rapidity with which it is carried out, and having regard to the general slowness of procedure in civil courts, I would, in section 168, fix a period within which the court should be compelled to issue its order, say, 15 days from date of presentation of petition. If there is much delay, a ryot may get wind of the matter, and carry off his crop.

96. Distraint in itself does no harm to the ryot, and the courts should not allow themselves to be led into long and tedious proceeding before granting the distraint order. It would, I think, be sufficient if a mere application were taken from the landlord, with a copy of the accounts, both to be altered, with penalties attaching to false statements and damages as under section 110, if the rent were ultimately proved not to be due. These precautions would sufficiently protect the ryot.

CHAPTER XIV.

97. *Sections 188 to 207.*—The whole of this chapter seems well adapted to the conduct of suits. I do not think any greater simplification of procedure is called for. I have nothing particular to suggest.

CHAPTER XV.

98. *Section 215.*—In this section I would leave out the word "registered;" none of the Midnapore ryots' holdings referred to in paragraph 37 above are registered in the sense of section 208 (2), and it is not likely that they ever will be. If, therefore, this word stands, it will deprive large classes of the kind, which it is sought to benefit, of the protection designed for them by the section.

99. The question, what particular liens and rights shall be considered incumbrances, is a very difficult one, and one which, with the limited time at my disposal, I am unable fully to go into. As far as I have been able to study this chapter, however, I am disposed to agree with the views expressed, with Statement of Objects and Reasons.

100. I have not yet received any reports from any of the Collectors, except the Collector of Midnapore. In order not to delay the submission of this report, I propose to embody any suggestion that may be received from the Collectors in a supplementary report to be submitted hereafter.

No. 639, dated Hooghly, the 26th June 1883.

From—F. WYER, Esq., Collector of Hooghly,

To—The Commissioner of the Burdwan Division.

With reference to your circular No. 38 of the 14th instant, calling on me for an immediate report on the Rent Bill, and Board's letter No. 351 A., dated the 29th March 1883, and forwarded with your letter No. 131 of the 16th instant, I have the honour to submit the following report. The shortness of the time allowed me for considering the Bill and ascertaining the views of the leading persons in my district is my excuse for its shortcomings.

2. I have received the opinions of Baboos Joy Kissen Mookerjee, Peary Mohun Mookerjee, Bijoy Kissen Mookerjee, Harihur and Monohur Mookerjee, Jogessar Shing, Chander Kant Mookerjee, Onooroop Mookerjee, Okhoy Chander Sarkar, and a note from Baboo Bimola Churn Bhattyacharjee, Deputy Collector.

CHAPTER II.

3 All the zemindars whose opinions I have received object to the Bill. In Baboo Joy Kissen's opinion the measures proposed will ultimately lead to no good results. He objects to the attempt to restrict for ever the area of *khamar* lands, and the presumption of section 6, on the grounds that the landlord's proprietary rights will be interfered with, and that the right of the landlord to let lands to the best advantage, which they are by the permanent settlement entitled to do, would be seriously restricted.

4. Baboo Onooroop Mookerjee thinks that it will be impossible to fix the area of khamar lands, for when a ryot gives up his ryoti lands, and no one comes forward to take them, then the land must become khamar. All khamar lands were once ryoti, and so no hard-and-fast line can be drawn between them. Baboos Bijoy Kissen, Harihur and Monohur Mookerjee think the proposed survey of khamar lands unnecessary, and will be the cause of litigation and expense, and the provisions of Chapter II will prevent the landlord from making improvements by digging tanks, planting groves, and so forth, and would expunge Chapter II entirely from the Bill. I think that there should certainly be an authentic register of khamar land in a village, but a zemindar should be allowed to add to his khamar or sir land. Thus, if he wishes to reclaim some of the culturable land in the estate, or to try agricultural experiments on a large scale, he should certainly be allowed to have the register prepared under section 9 corrected, as too in other cases, as where he exchange uncultivated land for holdings of a ryot with the ryot's consent.

CHAPTER III B.

5. I think it would be far better not to allow any enhancement of the rent of middlemen. If it be allowed on their own number, and that of enhancement suits to increase, their rents will be ever on the increase. If, however, enhancement of these tenures is allowed, I think there should be no maximum of enhancement fixed, for, if there is, in many cases such a rule would bear hardly on the landlord. For instance, the lands in Naihati now let, I believe, for 2 or 3 annas a bigha. When the railway bridge has been opened, the same lands will probably fetch Rs. 15 or Rs. 20 a bigha, and the increase in value will in no way be due to anything the tenure-holders have done.

6. Baboo Joy Kissen Mookerjee is of opinion that the limit put to enhancement is wholly unwarrantable, and that the effect of the rule will not only stop for ever all enhancement in districts like Hooghly, where the public assessment was so high as to be nearly 50 per cent. of the staple produce, but will gradually lessen the rates of rent to a material extent.

CHAPTER IV.

Putni tenures.

7. Baboo Bijoy Kissen Mookerjee and others are of opinion that the notice required to be published under section 8 of Regulation VIII of 1819 should be served through the Collector, and not by a single peon of the

zemindar. That rule has, they say, been all along the cause of great hardship to all parties, and the source of expensive litigation throughout the country. The notice should therefore be published by beat of drum by a collectorate peon. I think the proposed alteration should hardly be made, since the Collector would then be responsible for the due service of the notice, instead of the zemindar, and no sufficiently strong case has been made out against the present practice.

CHAPTER V.

8. This chapter is most strongly objected to by most of the zemindars. Baboo Joy Kissen Mookerjee, after quoting Sir Barnes Peacock's opinion, writes:—"The Bill proposes to extend the right of occupancy in a most objectionable manner, unless protected by a registered contract to the contrary. The right will accrue with respect to khamar lands of the landholder, and by a retrospective operation of the proposed law all ryots who held any quantity of land, even for a day, with other plots of land, however small, for 12 years in the same village or estate, will acquire the right for the whole quantity of land." Baboo Bijoy Kissen Mookerjee says that section 45 is a most obnoxious one. It deprives zemindars of their vested rights granted them by the permanent settlement: it may render inoperative kabuliyats executed years ago. The proprietary rights of zemindars are disregarded, and pass into the hands of ryots, who have only to enter upon the land under section 56 by force or fraud, and cultivate it for a few months. After the landlord has improved the land, the Legislature, without giving him any compensation, deprives him of it. Baboo Onooroop Chunder Mookerjee says that he would not grudge ryots acquiring this right, provided that they held and occupied the land themselves at a reasonable rent. But the Bill, by vesting the ryot with the privilege, and allowing him to sub-let the land while the sub-tenant can never acquire the right of occupancy, virtually throws on the actual cultivator all the risks and dangers which the Supreme Council seeks to remove. The Bill, if it becomes law, will make the zemindar share his rights with the occupancy ryots, and the zemindar is to be fettered in the numerous conditions in the process of enhancement, and a thorough re-distribution of landed property is contemplated, in spite of the permanent settlement, with the object of benefitting the ryot, but the practical result will be that the real tiller of the soil will be placed in the worst possible position. He will be left to the tender mercies of hungry middlemen, instead of to the better educated zemindar. He adds that the zemindars would scarcely exercise the right of pre-emption, and outsiders would step in. He asks whether anything could be more invidious than to allow a ryot who buys an occupancy holding to sub-let it to a cultivator who cannot acquire the right; but if a zemindar leases out any such holding, the cultivator at once acquires the right. He says further there is not much objection to the principle of the right of occupancy, but the zemindars protest to a man against the manner in which the proposed Bill deals with it. It seems to me that the right of occupancy should be acquired only by the actual cultivator, and that it should not be transferable; otherwise the right will in all probability pass in a few years into the hands of the money-lenders, and the actual cultivator will in no way have been benefited, except so far as they have obtained funds by the transfer of the right. By section 47 of the Bill the ryot is not allowed to divest himself of the right as against the landlord, yet by section 50 of the Bill he may transfer it.

9. One gentleman, Baboo Okhoy Chander Sarkar, while entirely approving of the distinctions between *khamar* and ryoti lands, and Khudkast and Paikast ryots, which, he says, are the key-stone to the entire superstructure of the land settlement in Bengal, and while he commends generally the provisions of the Bill which attempt to improve, define, and settle the rights and status of the ryots, and declares that they are no new rights, deprecates the forcing the ryot constantly into court in order that he may enforce the details of his rights. Thus by section 28 of the Bill the ryot may obtain registration of a transfer without first applying to the landlord under section 27. This, he says, is mistrusting the landlord unnecessarily. But passing this over from a ryot's point of view, the provisions for obtaining registration are very cumbrous and troublesome to the parties concerned. He then gives the steps which have to be gone through until at last the civil court's decree has been obtained. Here the Bill stops, but execution of decree must be taken out according to the Civil Procedure Code, and the zemindar may now contest the decree on the ground of notice being not served on him, and so on. Such provisions, he adds, are ruinous to the tenant, and a fruitful source of exasperation to the landlord; and to compel an ordinary Bengal ryot to go to two sets of courts for the mere luxury of having his name registered in his superior landlord's book shows a deplorable oversight of the position of the parties and the practice of the courts. The Government, by desiring to nullify certain voluntary contracts, proves clearly that it considers the zemindars powerful and the ryots weak, and yet it will set up class against class in such details of tenant's right as the registration of a transfer. This, the Baboo says, is not sound policy. The civil courts are already overworked, and people, besides having to pay the initial petition stamp duty of 8 annas, have to pay 8 annas for almost every prayer they make. Thus by compelling the ryot constantly to resort to the court against his landlord frustrates the first object of the Bill, which is to give reasonable security to the tenant in the occupation and enjoyment of his land. This is only one instance out of many in the Bill, and those provisions have been proposed only through completely ignoring the true position of the parties, and should be recast.

10. With regard to clause C, section 50, Baboo Bijoy Kissen Mookerjee says that this provision will entangle landlords and ryots in law suits of the most technical kind. What

should be considered improvement? The small *ails* which bound a ryot's fields? Is any ryot to be allowed to dig a tank and thus multiply a constant source of disease? He says that section 51 will result in converting money-lenders into occupancy ryots, and the ryots into their under-ryots, for no landlord, as a rule, would exercise the right of the pre-emption, since, as soon as ryots entered into the lands again, the right of occupancy would again spring up, and further, ryots would easily sell their rights without giving notice to their landlords. A full year should be allowed to the landlord within which he might take steps in cases of sale without notice. Baboo Joy Kissen Mookerjee objects strongly to the provisions for compensation for disturbances, as implying not only a title in them which the ryots never claimed or enjoyed, but as assuming a state of things which never existed. He adds that, with very few exceptions all improvements have been made by the landlords, and not even by tenants with fixity of tenure, and yet the Bill assumes that tenants-at-will have carried out these works. He objects to making the rights of occupancy saleable. The right of pre-emption will place the landlord in a worse position than any other purchaser, for he will be allowed to let it subject to the occupancy right and at the old rent even to a new-comer and stranger. He quotes the opinions of Sir Richard Garth and Mr. Elliot against the proposal.

Tables of Rates 62 to 72

11. It is the general opinion that tables of rates cannot be prepared, and in that opinion, as far as my experience goes, I agree, but special enquiries have been made by the Board of Revenue on this point, and the result of the enquiries will doubtless settle the question.

Enhancement 75, 76.

12. I think that the limit of enhancement should not be fixed. The only way to do so would be to define what proportion of the rent, as defined by Ricardo, should be left with the ryot, always bearing in mind that the rent so defined is rack-rent. With regard to the rules contained in sections 73, 74 and 75, Baboo Bijoy Kissen Mookerjee thinks that they cannot be carried out, so many restrictions have been placed in the way of the landlord in carrying them out. He says that it was expected that some improvements would result after so much writing and discussing, but the result has been no improvement on the present law. He also thinks that section 79 will always be worked against the landlord by the ryots when enhancement suits have been started, for the ryots will only have to combine, and by suing the landlord under this section force him to give up his enhancement proceedings.

13. *Sections 81, 82* are objected to by Baboo Bijoy Kissen Mookerjee on the grounds that in some cases, according to local custom, the landlord is entitled to recover more than half, and the matter had better be left to be settled by the parties. Baboo Bimola Churn Bhattyacharjee thinks that in section 82 the words "notwithstanding any contract to the contrary" should be struck out; for in many parts of Behar, where roads are very bad, it is the grain which the zemindars keep up in stock during famines, that keeps the people from starving, and asks why Government should afford a means of abolishing a system which the experience of ages has proved beneficial to the country. This section was proposed to the Behar Commission by this officer, and his opinion to the effect that special contracts should not be done away with is entitled to great weight. I have had no experience in Behar, and so pass no opinion on the matter.

14. *Section 85.*—This section is objected to by Baboo Bijoy Kissen Mookerjee on the ground that proper prices will not be supplied, and it would be impossible to do so for every village. It will be quite sufficient, however, to obtain the prices at the principal market-places where the new crops come into the market.

15. *Sections 85, 86.*—Section 85 will bear hard on landlords, ryots being allowed to occupy his bastu land, though he does not use it as such. Baboo Bimola Churn Bhattyacharjee informs me that in Behar no rent is paid for bastu land, and in that case he certainly should have to give it up when he is no more a ryot in the proper sense of the term. For this part of the country, where rent is paid for bastu land, non-payment of rent for one year should render the ryot liable to ejectment.

16. *Sections 93 and 94.*—Clauses *a* and *b*, sub-section 2, should, I think, be struck out. A landlord gets a decree for fair and equitable rent, if the ryot does not choose to pay, the zemindar has to suffer. He has to pay for "compensation for disturbance." Does he disturb the ryot when the ryot refuses to pay his just rent?

17. *Section 98.*—This section is objected to by the zemindars, but will be, I think, a most useful one.

18. *Section 119.*—By this section the practical difference between occupancy and ordinary ryots would be removed. Separate limits should be fixed for each class.

19. *Section 166.*—If the power of distraining crops for current arrears is continued, the procedure should be very much less complex than that proposed in the Bill. The costs would be very heavy, and ultimately fall on the ryot. It would be quite enough to allow the zemindar to distrain the crops himself, but in no case to sell them without the order of a competent court. As a rule the arrears would be paid on the mere attachment.

20. *Section 167, clause 2.*—The application should be allowed on plain paper.

21. *Sections 169 and 170.*—The zemindar should give the list of demand and account to the ryot previous to the application for sale. If after the distraint and delivery of the demand and account paper the ryot does not pay up, then the zemindar should apply to the court to sell the crops, and any objection the ryot might have would be heard.

22. I have given above the principal objections to the Bill. It excites great apprehensions in the minds of the zemindars, and will, I think, not effect any permanent settlement of the rent question. Mr. Ilbert says that it is "merely a Bill to amend and consolidate certain enactments relating to that subject" (the law of landlord and tenant), and it seems hardly worth while to pass a measure which excites so much opposition among the landlords merely for this object. I am inclined to think with Mr. C. B Clarke that the real remedy will be a ryotwari settlement, for in that way only would the ryot get rid of the middlemen; and, as Odysseus says, "a multitude of masters is no good thing."

23. To show how strong the feelings of the zemindars are against the Bill I enclose copy of a note on it, sent to me by Baboo Peary Mohun Mookerjee.

I find that I was quite unable to let you have my report by Saturday last; I have therefore, to save time, sent a copy of it direct to the Board of Revenue.

No 648 dated Hooghly, the 27th June, 1883.

Memo. by—The Collector of Hooghly.

Copy, with enclosure, forwarded to the Secretary to the Board of Revenue.

The Bengal Tenancy Bill.

I am of opinion that in so far as the Bengal Tenancy Bill proposes, (1) to limit the maximum area of khamar lands; (2) to extend the right of occupancy in the manner provided in section 47, and in a modified way to tenants-at-will; (3) to give the occupancy ryot a right to the accretion to his holding; (4) to make a right of occupancy transferable; (5) to limit the maximum increase of rent to one-fifth of the value of the staple produce; (6) to restrict the landholder's right of letting in any way he chooses lands which come to his khas possession; (7) to award compensation to ordinary ryots for disturbance, and (8) to virtually abolish the law of distraint; it is a direct breach of the compact known as the permanent settlement, and is a measure of spoliation of vested rights of property.

The other provisions of the bill are not such as would alter for the better the existing law on the subject. The provision, for instance, as to instalments of rent, contained in section 97; the provisions for deposit of rent, contained in section 103, the provision for the appointment of managers of joint estates, contained in section 112; the provision for a record of rights, contained in section 164: the provision for the sale of tenures and under-tenures, with encumbrances, contained in section 211; and the limitation to the right of appeal in certain suits, contained in section 198, would aggravate the defects of the present law, and introduce complications and difficulties where none exist at present, would give rise to unnecessary and harassing litigation, and set class against class, and individuals against individuals, in matters in which legislation may well aim at the establishment of peace and harmony.

The Bill presupposes a power in the legislature to take away material rights from the landholder, and to give them to the ryot The Hon'ble Mover of the Bill claims that power under section 8 by Regulation I of 1793. When, however, it is recollected that at the time of the Permanent Settlement landholders had the legal power of not only compelling the attendance of ryots, but also of inflicting corporal punishment, and confining them for non-payment of rent, of levying sayer duties on internal trade, of maintaining police establishment for the preservation of peace, and of appointing kazees and canoongoes for the administration of justice, civil and criminal, and that some of the subsequent Regulations were expressly passed to divest the landholders of almost all of these seignorial powers, it may be fairly contended that the reservation contained in that section could have reference only to the powers thus exercised by the State, and not to any interference with the proprietary rights of landholders, with regard to which they were assured that "they will enjoy exclusively the fruits of their own good management and industry," and that "no power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected."

It seems to me that the Indian Legislature, by giving to the reservation in section 8 an interpretation which is at least doubtful, and assuming powers which are denied by such eminent and responsible authorities as Sir Barnes Peacock and Sir Richard Garth, may give cause to parties interested to question the validity of its acts. The principle laid down by Sir Lawrence Peel in Wheel Tax Case (Taylor and Bell, 391), would, I think, give them a *locus standi* in such an attempt. "It is the province of courts of justice of the country to decide on the legality of *Acts of Legislature*, if a suit is instituted to decide whether the Legislature has or has not exceeded the limits within which it may legislate.

The matter presents yet another aspect. The present body of landholders have mostly come to the possession of their estates and talooks by purchases made for adequate considerations, and crores of rupees have been thus invested in land on the faith of the binding character of the Permanent Settlement; but if the Bill in question passes into law, the value of landed property will be materially reduced, and while those who will make purchases hereafter will pay only the reduced prices, and those who have gone before had a full return for their money, it is only the present body of landholders who will be the losers, in many cases to a ruinous extent. It is with reference to such a case as this that Sir J. S. Mill observes that it would "impose a penalty on people for having worked harder and saved more than their neighbours."

But the question is, where is the necessity for such a piece of revolutionary legislation? Not a single suggestion for a radical amendment of the Rent Law emanated before the publication of the Draft Bill of the Rent Commission from any of those responsible officers of Government who are charged with its administration. The Chief Justice of Bengal, on the contrary, held that the Bill "is calculated to deprive landlords, unjustly and unnecessarily, in my opinion, of rights which the courts of law have always considered to be their due." No part of these provinces is suffering from an agricultural depression. The condition of the ryots is unquestionably one of growing prosperity, and the fabulous wealth of the landholders which both Justice Cunningham and the Hon'ble Mover of the Bill deduce from the fact of the increase of the rent roll of these provinces from three and a half crores at the time of the Settlement to more than 13 crores at the present time, even if well founded, is no index either of a corresponding poverty of the ryots or of their rights having been usurped. So long ago as 1871 the Government bound itself by a promise to give the landholders greater facilities for the recovery of rent in return for the obligation laid upon them to collect the tenant's share of the road cess; but surely a plea of fulfilment of that pledge cannot justify a radical amendment of the Rent Law to the detriment of the most valued rights of landholders.

On the above grounds I think that a radical amendment of the Rent Law is wholly uncalled for, and that several of the provisions of the Bill involve assumptions of fact which are not merely not true, but the very reverse of the truth; interpretations of law which are opposed to judicial decisions; inroads into vested rights of property, which are as much objectionable as measures of direct confiscation; visions of peasant proprietorship, which leave out of sight important factors peculiar to the Indian social economy, and theories of legislation which would justify a universal distribution of all property.

OOTERPARA,
June 21st, 1883.

PEARY MOHUN MOOKERJI.

No. 1928-694L.-R., dated the 24th July, 1883

From—A. P. MACDONNELL, Esq., Officiating Secretary to Government, Bengal.

To—The Secretary to the Government of India, Legislative Department.

In continuation of my letter No. 1876-669 L.-R., dated the 18th July 1883, I am directed to submit, for the information of His Excellency the Governor General in Council, the accompanying copy of a report * on the provisions of the Bengal Tenancy Bill, 1883, submitted through the High Court by Mr. J. P. Grant, District Judge of Hooghly.

* No 750, dated the 13th July 1883, enclosed with letter No. 2014, dated the 17th idem, from the Officiating Registrar of the High Court.

No. 2014, dated Calcutta, the 17th July 1883.

From—C. A. WILKINS, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

In continuation of my letter No. 1835, dated the 27th ultimo, I am directed to forward, for the information of His Honour the Lieutenant-Governor, the accompanying report on the Bengal Tenancy Bill, which has just been received by the court from Mr. J. P. Grant, District Judge of Hooghly.

No. 750, dated Hooghly, the 13th July 1883

From—J. P. GRANT, Esq., District Judge of Hooghly,

To—The Registrar of the High Court of Judicature at Fort William in Bengal, Calcutta.

I have the honour to submit a report as requested in your letter No. 1157, dated 23rd April 1883, on the Bengal Tenancy Bill, 1883. I am sorry that press of other business, which could not be neglected, has delayed my examination of the Bill, the subject of which, moreover, demands considerable thought and deliberation. I do not propose to enter into the general question of the necessity for legislation, which, I think, no one who has at all studied the subject denies, still less shall I discuss such matters as the alleged inviolability of the Permanent Settlement, &c. I shall content myself with criticising the provisions of the Bill *seriatim*, from the point of view of what I understand to be its two-fold object, *viz.*, (1) to give security to the tenant in the occupation and enjoyment of his land, and (2) to give facilities to the landlord for settlement and recovery of his rent.

CHAPTER I.

2. *Section 3, clause* (5).—The definitions of "tenure-holder" and "ryot" are not satisfactory. The latter especially is defined in negative terms only, and the definition, although apparently intended to connote something different from a ryot who is a tenure-holder under section 14 of the Bill, yet includes this class. If these definitions are maintained, the conven-

tional meaning of the word "ryot," the nearest English equivalent of which is 'yeoman,' will disappear, as indeed will the class itself, for the inevitable tendency of the proposed law is to make right-of-occupancy ryots, in fact as well as in name, middlemen. In this view, perhaps, the reserving of the term 'ryot,' for the class upon which the actual cultivation of the soil must ultimately fall, is far-sighted. I would, however, take occupancy ryots out of the category of tenure holders. There is nothing, *pace* the author of the Objects and Reasons in common between their position and the position of those who are really middlemen, such as patnidars and farmers. The law should recognise the existing two classes of ryots, *viz.*, those having, and those not having, rights of occupancy, and in defining them should employ the word 'ryot' for both. The definition of tenure-holder should be altered to signify exclusively a middleman between a proprietor and a ryot. This clause should also be amended so as to include in the definition of ryoti land tanks which are often let as ryoti holdings for fishing purposes.

CHAPTER II.

3. This chapter purports to limit for the future *khamar* land to what was such land at the passing of the Bill. I doubt both the policy which would enact this, and the possibility of enforcing it, if enacted, in face of the provisions of section 141 of the Bill as regards merger. I do not see why a proprietor should be restricted from converting to *khamar* lands from which the ryot has been lawfully evicted, or which he has vacated by surrender, or to which there is no heir. There is again nothing in the Bill to prevent a proprietor purchasing occupancy rights and then holding the land *khas*. It is, indeed, to be feared that this expedient will be largely resorted to as the only one by which occupancy rights can be extinguished, and thus, practically, *khamar* lands must largely increase in spite of the Bill. It must be remembered that, in some instances, a zemindar can find no one to take up lands from which the previous tenant has absconded or has been evicted, or which he has surrendered, or to which the last occupant has left no heir. In such a case the zemindar *must* hold the land khas, or in *bhag-jote*, or let it lie idle while he is paying revenue on it.

CHAPTER IIIA.

4. Sections 14 and 15 of this chapter convert the right of occupancy ryot into a tenure-holder. I have already pointed out the confusion of ideas here indicated, which is certain to breed confusion of practice. You cannot alter the conventional meaning of words by Act of Parliament. Section 16 converts the *bhag-jotedar* into a ryot who may possibly acquire a right of occupancy. This is totally opposed to all the existing notions of a *bhag-jotedar's status* and position. He is, in fact, only a labourer under another name. His share of the crop is the wages for which he has engaged to cultivate it. This is the only way in which many proprietors can use their *khas khamar* land. I do not know whether the definition of 'tenant' excludes the *bhag-jotedar* from the operation of this section; but if it is intended to do so, it might be more clearly so expressed by an illustration. Of that portion of this chapter regarding enhancement, I have not much to say, except that I approve of a limit being placed to enhancement, and that I do not think much occasion will arise for recourse to the civil courts under this part of the law. The cases in which the customary rate payable by holders of similar tenures in the vicinity cannot be easily ascertained must be rare. The provisions regarding registration are very necessary, but, as here drawn, are imperfect. It is quite proper that the proceedings to enforce this should be before the Collector in the first instance; but if they are to be of any effect, some penalty must be provided for the case of neglect or refusal on the part of the zemindar to register. It is vain to enact that he "shall" do this, and "is bound" to do that, unless some sanction be provided. The result of the law in its present state will be that zemindars will, as a rule, refuse to register in order to force the ryot into the civil court, where all the resources of chicanery will be resorted to call in question the title of the ryot or the nature of his tenure. There should be provision for the imposition of a fine upon the zemindar by the Collector on proof of his omitting or refusing to fulfil the requirements of the law, and if thereafter the zemindar is taken to the civil court, he should, whether the applicant succeeds or not, be liable for his costs.

CHAPTER IV.

5. I do not see why the patni Regulation should be incorporated with this Bill. The character of a complete code is repudiated for the Bill, and I see no more reason for incorporating this Regulation than for incorporating the Regulation creating the Permanent Settlement which is still left as a separate law, and is, in its nature, as much connected with the Bill as the Patni Regulation is. If this last is to be incorporated, the opportunity should be taken of amending it, of which there is, in some respects, great need. The difficulty of proof of private service of notice of sale especially is a standing complaint of zemindars and one which is only too well-founded. Service ought certainly to be through the Collector, whose certificate as to a good service ought to be conclusive proof of it. In many other respects, too, the Patni Law might well be amended; but I do not enlarge on this subject, as I cannot suppose that this Regulation will be degraded bodily into a schedule of the Rent Law.

CHAPTER V.

6. By this chapter the 12-year rule in regard to a prescriptive right of occupancy at fixed rates is maintained, and thus the zemindars are no worse off than they are under the existing

law, and have therefore, I think, much to congratulate themselves on. Considering that it is admitted on all sides that this rule of Act X of 1859 was a most mistaken one, operating to the prejudice of a large body of ryots who were right-of-occupancy ryots already on other conditions, I am rather surprised at the retention of the rule. I would have approved a much shorter term if the test is to be at all of one time. But taking the 12-year term, it is absolutely necessary to apply it to all alike, and thus I think it expedient that even where a contract to the contrary exists it should be set aside. On the same principle, taking the word 'estate' as defined in the Bill, I consider that it is an improvement on the former state of things to allow the *status* of a settled ryot to one who has held in the same estate, though not perhaps always in the same village. By the nature of the case the different villages of an estate must be contiguous to one another. The provisions of section 50, defining the incidents of an occupancy right, generally, have my entire approval. I have never yet known the place in which such tenures are not transferable by custom even now. The provision regarding improvements may at first create some litigation. Zemindars will still seek to prevent ryots digging tanks and cutting down trees; but this will soon right itself. The crux of the whole question is the determining what is to be looked upon as constituting a holding, a permanent one at fixed rates, which is the estate which the Permanent Settlement purported to confer on all resident ryots; and I think this end has been achieved by the Bill with less injury to zemindars' present interests than they at all looked for, loudly as they may still exclaim against it. The provisions as to pre-emption are entirely in their favour. They will lose nothing even by the provision which accords the *status* of a right-of-occupancy ryot to one who takes such a holding after the zemindar has purchased it; for we may be sure that the zemindar will not let a ryot come in who has not paid, by way of *bonus*, at least as much as the zemindar gave for the out-going ryot's right of occupancy; who has not, in fact, purchased from the zemindar the right of occupancy inherent in the holding. The only part of this chapter that, I think, the zemindars may legitimately object to is section 49. "Holding *khamar* land as a ryot" is a contradiction in terms. Of course, if a zemindar regularly settles his *khamar* land with a ryot he converts it into *ryoti*; but *khamar* lands, as a rule, are cultivated on the *bhag-jote* system, which, as I have pointed out, is not really a system of land-tenure, involving payment of rent, whatever economists may say of the metayer system, as prevailing in Europe, but is simply a system of paying wages on the co-operative principle.

CHAPTER VI.

7. This deals with enhancement of the rents of occupancy ryots. It provides, as one means of adjudging enhancement, for the drawing up of a local table of rates of rent and produce. I believe that it will be practically impossible to draw up such tables: indeed, I understand that an attempt has been already made on a considerable scale and has signally failed This was only to be expected. To begin with, much must depend in the enquiries incidental to such a matter upon the individual idiosyncracies of the particular officer making them; and again the whole idea pre-supposes a sort of natural unfluctuating dead-level in the outturn of land, and taking no account of improvement and industry.

It is impossible to expect any trustworthy result from such tables, which, moreover, to be of any real use, must be applicable, each of them, to comparatively small areas. I do not know where Government could obtain the machinery necessary for this work on any very considerable scale. Where such tables have been prepared, they are to furnish conclusive evidence; but where no such tables are prepared, the courts are to proceed in enhancement suits on certain prescribed principles stated in sections 74 and 75, which I cannot distinguish from those now law. The greater number of enhancement cases will be those to which clause (*c*) of section 75 applies, and we are thus sent back to Ishur Ghose's case. As to the one-fifth limit, I understand this, if calculated at harvest time, will be unduly favourable to the ryot; and that the more just proportion would be one-fourth. I do not know how the market rate at harevst time is to be authoritatively settled; but this is a much easier task than the preparing a table of rates. Further, the produce of the *staple* crop alone is to govern the calculation; but where this is rice, there is often a very valuable second crop, which should not, I think, be ignored.

CHAPTER VIII.

8. This deals with what are very mistakenly called "ordinary" ryots. The ordinary ryot of the country is the ryot having rights of occupancy; it is all *other* classes of ryots that are exceptional. I do not see why the every-day terms of "ryots having a right of occupancy" add "ryots not having a right of occupancy," should not be maintained. But the mistake goes deeper than the mere name. The only difference between the two classes of ryots is that one has fixity of tenure and the other has not. The provisions of this chapter would seem to imply that the former class possesses some privilege of setting at a lower rate of rent also; for the "ordinary" ryot may, by the Bill, be rack-rented up to a certain maximum, which, in practice, will certainly be evaded. All classes of ryots have now, and ought always to have, equal protection at the hands of the law in respect of the rate of rent payable by them; the only difference is that while one class hold from year to year, or for a term of years on lease, the other holds in perpetuity, if he only pays his fixed rent. For these reasons I do not agree with those who find fault with the provisions of section 93. Without this section, as soon as the Bill passes, there will be a flood of notices of enhancement upon tenants-at-will, which they would have no means of resisting. It is true that, under exist-

ing circumstances, a tenant-at-will has little or no inducement to make improvements, and therefore, as a rule, make none; but this is no reason, if the law is so altered, as it is here proposed to alter it, as to give him also a far better prospect than he has now—of remaining on the land as long as he pays a reasonable rent—why tenants-at-will in the future should be assumed to be incapable of making improvements. I therefore approve of the clause (*a*) of this section. The clause (*b*) is also necessary, much as it has been exclaimed against, in order to prevent arbitrary and unreasonable enhancements, the sole object of which is not to raise the rent but to eject. For this reason I think it is right that the landlord should know that he can only eject his ryot on paying him the amount that he would have received from the ryot in increment of rent for the term during which his rent, if enhanced, must be let alone. I think this provision has been most unreasonably criticized. Its opponents argue from the erroneous point of view that the Indian agricultural tenant-at-will is one who can be turned out, without rhyme or reason, at the mere will or even caprice of the landlord. I need not say that this is not so; that if a tenant holds over, after notice of enhancement or notice to quit, he cannot be proceeded against only for compensation at a reasonable rate for use and occupation, and if he pays cannot be turned out.

CHAPTER IX.

9. The provisions of section 98 are absolutely necessary, in order to abolish the practice which has, during the last few years, been adopted by zemindars, especially in this part of the country, of demanding rent in monthly instalments, and suing for each instalment if not paid This cruel procedure has been the ruin of thousands of ryots, as it was deliberately intended to be, and is one of those crying abuses that call for the interference of the legislature. Section 100 is also urgently called for on much the same grounds. At present ryots are entirely at the mercy of the zemindar, or rather of the gomashta, especially as to the appropriation of the amount paid as rent. But to make this section really effective, the forms of receipt in foil and counterfoil ought to be supplied by Government at cost price, or even given away to the landlord. At least no landlord should be allowed to use a form, a specimen of which has not been presented to the Collector and approved by him, such specimen being preserved for future reference. I am more doubtful as to section 106; but even this is only an amplification of the *akhiri* or *farkatidakhila* which all honest zemindars have been long in the habit of giving. The provisions as to depositing rent are also necessary, especially in the cases of clauses (*b*) and (*c*). As to (*a*) it has been the greatest boon that has been conferred on the ryot since the passing of Act X, and has been hitherto unnecessarily clogged with the condition of proof of tender, such condition being a mere premium on perjury. Section 119 is rather obscurely worded. It may be held to operate retrospectively, in which case there will be a perfect invasion of the courts by ryots with suits to have their rents re-adjusted. As regards occupancy ryots, the words "and not otherwise" of section 79 will stop them, but the position of other ryots is not clear.

CHAPTER XA.

10. I approve of the definition of improvements here given, but I see no reason whatever for making the case of the "ordinary" ryot different from, or rather the converse of, that of the occupancy ryot. As I have said before, the only difference between the classes is that the former has a firmer hold on the land, but that this does not mean that the latter has no hold on it. Once admitted, he cannot be turned out as long as he pays a fair rent. Why should he not be in the same position as the occupancy ryot as regards the making improvements? The Bill, indeed, is inconsistent with itself on this point. It puts all classes of ryots on the same footing as regards the improvement of house-building, as it certainly could not decently do otherwise. What is there in the nature of this species of improvement that makes it exceptional? The Bill is logically wrong here. Hitherto neither landlord or tenant has made "improvements;" the former because they do not rightly discern their own interests, the latter because they do. *They* have hitherto refrained from making improvements, not because they fail to see the ordinary advantages of making them, but because they know that their making them would only entail the result of the zemindar seizing upon the fact to raise their rent. The provisions of the Bill will relieve occupancy ryots of this fear; but they do not protect the ordinary ryot, or rather they absolutely discourage him. The very class who ought to have even exceptional facilities for making improvements, are denied the facilities that are given to more favoured classes, indeed are positively obstructed where the others are facilitated. I do not think this reasonable, to say nothing of justice. We may be sure that the zemindar class will not "improve;" any improvements that may come must come from the cultivator class, and all these should have equal rights in this respect. (*B*) Rent-free lands, as well as revenue-free lands, should be included in section 133. I also doubt the policy of giving appeal to the civil court in the matter of the standard pole. These are matters which are better left to the revenue authorities. (*C*) Here, again, I think that the notice of surrender should be served through the Collector, not a civil court. (*D*) What is the effect of section 141 when read with section 56? If the interest on an occupancy tenant be "extinguished" by merger, can it be revived when the landlord, if he does so, re-lets the tenure? This should be made clearer, and one or other section should contain "notwithstanding anything contained in section." (*E*) The provisions of this part will obviate much inconvenience now felt. There ought, however, to be specific provision disabling all the co-parceners for doing any acts of management, and making such acts null and void. As things exist, a co-sharer has been known to go on collecting rents, notwithstanding the appointment of a general manager.

CHAPTER XI.

11. This chapter is a very important one, as re-introducing a state of things which the preamble of Regulation II of 1793 states was found then to be unsatisfactory. The principle therein enunciated is that disputes between landholders and tenants shall be adjudicated by the civil courts and not by the revenue authorities, who otherwise would in many cases be deciding upon their own acts. Under the present chapter, however, revenue officers will have it all their own way. It is true that section 155 allows of their referring a case to the civil court, but this provision will be a dead-letter, depending, as it does, on the option of the revenue officer alone. Moreover, it must be remembered that, under clause (*a*), section 227 of the Bill, Government may invest any revenue officer with the powers exercised by a civil court in the trial of suits. The chapter provides an alternative to the procedure under chapter VI, as regards enhancing or varying rents; this being done in the one case by the civil courts in separate and individual suits, while in the other case it is done by dealing with whole estates at one operation, and by the revenue authorities. I think that the distinction ought to be made complete, and reference to the civil court in the latter case abolished. The procedure of the revenue authorities might still be that of the civil courts. I believe that adjustments of rent will be more equitably made when on this large scale than is possible with a civil court dealing with isolated suits. Clause (*b*) of section 151 appears to re-enact Bengal Act V of 1876, which has hitherto been a dead-letter. In its present shape it promises to be of some practical effect; but I do not see the above Act among those repealed by schedule I of the Bill.

CHAPTER XIII.

12. The power of distraint being, I am sorry to see, maintained, the provisions here made are hedged round with such wholesome checks that it cannot be hereafter used as the engine of fraud and oppression that it has hitherto been. Instead, however, of the power by the Local Government to suspend its provisions in any local area, I would prefer to see it provided that the chapter should be inoperative, unless especially extended to a local area, which should not be smaller than a collectorate. I myself doubt very much the necessity of any law of distraint anywhere, not seeing the justice of giving a landlord-creditor priority or preference to all other creditors; and I think that, with the improved procedure here to be enacted as to the recovery of rent-at-law, it would be well to wait and see whether any law of distraint is really called for. This would best be done by leaving the chapter to be extended when and where experience might show it to be needed. If, however, distraint is allowed, all the proceedings regarding it should be as prompt as possible. The rules to be prescribed by the High Court under section 169 should require applications for distraint to be dealt with within a certain time, according as the court allows of additional evidence or not, that the applicant furnish a properly drawn-up form of notification (section 169), at least two forms of demand and account (section 170), one of proclamation of sale, and at least six forms of certificate, to be given to purchasers (section 178). Section 179 appears to require the immediate distribution of the sale proceeds on the spot by the distraining officer; whereas if the distraint is paid off by a deposit before sale into court or into the hands of the distraining officer, the amount must be held for one month before being paid out. I do not understand why there should be this distinction. I think that in all cases the money, whether realized by sale or by deposit, ought to be paid into court, held for one month, and then distributed. In any case, even if sale proceeds are not held for one month, they should, I think, be distributed at the court and not on the spot. The present class of pleaders are not to be trusted with this duty. As regards penalties, I would add to section 186 a provision, that a criminal prosecution is to be no bar to any civil remedy that may lie open to the injured party.

CHAPTER XIV.

13. I very much approve of the adoption of a procedure simplified from the existing code, instead of the odd and fanciful procedure recommended in the former Bills, founded on analogy to that on negotiable instruments, &c. I have carefully considered this part of the Bill, but have no suggestion to make, except that to section 195 should be added some such words as "granted by an order written and signed by the presiding Judge on a written application to that end." Unless this is done, cases will happen in which a fictitious written statement, purporting to be made by the ryot and containing damaging admissions against his interest—certified copies of which will be taken out by the plaintiff—will be found on records after disposal. I would also add to section 189 some words to the effect that, notwithstanding that suits are instituted by naibs and gomashtas under general powers, the personal responsibility of landlords under sections 209 and 210 of the Penal Code shall remain unaffected. It is notorious that a regular system of instituting false legal proceedings, either by suing deliberately twice for the same arrear, or by executing decrees twice, or by drawing out money paid into court before or during suit, and then executing the decree, is practised in many districts. When such is the case, it is by deliberate direction of the landlord. His agents have no incentive to sue on any but really existing cause of action.

CHAPTER XV.

14. This chapter will go a good way to prevent excessive sub-infeudation, and I can add nothing to the argument in favour of these provisions which are contained in the Statement of Objects and Reasons. The remaining chapters of the Act call for no remark.

No 2179 787L R, dated 13th August, 1883

From—A P. MacDonnell, Esq, Officiating Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Legislative Department

1. "Notes on the Bengal Tenancy Bill" by the Committee of the Behar Landholders Association, with appendix
2. No 484R, dated the 7th 13th July, 1883, from the Commissioner of Patna
3. No 188R L, dated the 2nd July, 1883, from the Commissioner of the Presidency Division
4. No 246A M, dated the 23rd June 1883, from the Officiating Commissioner of Dacca
5. No 335G C, dated the 30th June, 1883, from the Commissioner of Chittagong

In continuation of my letter No $\frac{1928}{891}$ L. R., dated the 24th July, 1883, I am directed to submit, for the information of His Excellency the Governor General in Council, the accompanying copies of reports on the provisions of the Bengal Tenancy Bill, 1883, received from the Behar Landholders Association and the Commissioners of the Patna, Presidency, Dacca, and Chittagong divisions.

No. 484R, dated Bankipore, the $\frac{7th}{13th}$ July 1883

From—F M Halliday Esq, Commissioner of the Patna Division,

To—The Secretary to the Board of Revenue, Lower Provinces

With reference to your No 351A, dated 29th March last, calling for a report on the Bengal Tenancy Bill, after holding a conference with the Collectors subordinate to me, I have the honour to say that the following Collectors attended the conference:—

Mr Norman, Collector, Mozufferpore
„ Boxwell, ditto, Durbhunga.
„ Quinn, ditto, Sarun.
„ Nolan, ditto, Shahabad.
„ Grierson, ditto, Patna.
„ Henry, ditto, Chumparun.

Mr Skrine, who had very recently joined as Officiating Collector of Gya, was unable to attend.

2. The Bill was discussed chapter by chapter.

Taking Chapter II, section 5, it appeared to some of us that this section did not provide for the case of dearah land which might come into existence subsequent to the passing of this Act, though, in the opinion of two of the Collectors, under the existing Bill such lands are provided for under section 6

I myself considered that sections 5 and 6 might deal hardly in the case of small proprietors being allotted separate shares under the provisions of the law for partition of estates, after the Act came into force; but I admit that this would more probably fall under the subject of an amendment of the partition law, rather than of the rent law. It seems to me that a small proprietor, in a partition case, who may have his proportion of zeraat in the estate in his own holding, and who objects to the partition proceedings, though unsuccessfully, may find himself turned out of his zeraat by the process of partition As an original proprietor of the parent estate, he was entitled to, and held, his proportion of the zeraat lands, and I think some provisions might be made in the present Bill by which such a proprietor on making the arrangement, which is usually made in Behar in these instances should retain his original proportion of zeraat land in the new estate, and that this land may be registered by him as new zeraat. It almost always happens that ryots, who in the course of partition find themselves under a small proprietor in the allotment apportioned to him, relinquish their land voluntarily, and enter into new arrangements with the larger shareholders. These lands on being relinquished should be recognized as zeraat, after the commencement of the Act, if the proprietor should so wish It was unanimously agreed at the conference that the point should be brought to notice.

CHAPTER IIIB.

Section 12 (3).—With the exception of Mr. Boxwell, who did not think it necessary to interfere, we came to the conclusion that the words "more than thirty per cent. or" should be omitted.

There appears to be no particular reason for having a minimum of enhancement. For instance, take the profits at Rs. 100 and rent Rs. 60. The tenure-holder's share Rs. 40 Under the Bill his share would be reduced to Rs. 30, which in many instances might be very unfair

Section 22—This section states that the rent of a tenureholder cannot be enhanced to more than double the rent previously payable. On the representation of Mr. Henry, we considered that this section requires re-consideration, for it ought to meet the case of those under-tenures which are created by zemindars in the names of their wives and families at quit-rents, and are held separately from the zemindari.

If such an estate were sold, the auction-purchaser could only get an enhanced rent of double the amount of the original quit-rent. This would seem to be a hardship. Under the Bill, the civil court would be bound to accept the Collector's table of rates, and to enforce it, unless the ryot could show that by contract or special consideration he was entitled to hold at lower rates.

Section 25.—In connection with this section, the Behar Landholders' Association have, in their remarks on the Bill (copy of which is appended), raised the contention that the landlord should be allowed the right of pre-emption in permanent tenures. The contention seems untenable. At present there is no right of pre-emption in the case of tenures (such as the guzashta rights in Shahabad), and no special reason appears for according it now.

CHAPTER V.

Sections 43, 45, and 47.—In connection with these we were unanimously and decidedly of opinion that the Bill gives two great advantages to a non-resident ryot, and that the extension of the right of occupancy to all lands held in the same village or estate should be conditional on residence; and I would submit that the distinction, which exists according to the custom of the country between a resident and non-resident ryot, and which has been continually affirmed and re-affirmed by subsequent Regulations and Acts, has been entirely lost sight of in the Bill. As a corollary, whatever qualification of occupancy be adopted, it seems most necessary that the definition of "estate" in section 3 should be adhered to, and hence section 13 (*b*) should be expunged. In Behar, the retention of this clause would certainly lead to endless confusion and complication.

Section 48.—This section has been already noticed by the Hon'ble Mr Reynolds in his speech in Council, where he speaks of it as practically an admission of the vicious principle that the occupancy right may be made a matter of bargain or contract between landlord and tenant. The section appears altogether unnecessary. A proprietor before his estate was sold for arrears of revenue might go about granting occupancy rights all round, not a large sum of money, and thereby diminish the value of the estate; occupancy rights being not voidable under the sale law. As Mr. Reynolds has remarked, the occupancy right is not the landlord's to grant: it is essentially inherent in the status of the resident cultivator, we would therefore record our protest against this section.

Section 49 (1).—In view of the great extension of the right of occupancy given to ryots, I, in concurrence with Messrs. Grierson and Henry, would add after the words "fixed period" the words "or under an agreement to hold from year to year." It seems necessary to take into consideration on this point the case of small proprietors who let small plots of their zeraat lands from year to year to labourers on a verbal agreement, and to whom the formal execution of a lease, except at considerable expense, is almost an impossibility. It is altogether so very opposed to the whole custom of the country that occupancy rights should so accrue in *bond fide* zeraat lands, except with the consent of the landlord, that numbers of small proprietors would never dream of such privilege existing for the cultivator, and would fail to take the only precaution to retain their rights which the section, as it stands, gives.

Section 50.—"Incidents of occupancy right generally."

The general sense of the conference was to approve of the provisions. But it was considered advisable to draw attention to the remarks submitted by Messrs. Boxwell, Quinn, and others regarding sub-letting. I give the remarks as follows: Mr. Boxwell states:—"I myself think the subletting powers of the occupancy ryots the most doubtful and only dangerous part of the Bill. The great object is to secure the cultivator his occupancy at a fair rent, to be transmitted to his heirs as long as the family can last. I see no good in sub-letting."

The whole question seems to me to be, is more good or harm done by trying to stop it? A long string of rent-payers and receivers must be bad. "As far as an occupancy ryot is a rent receiver, he is one of the objectionable class of land-jobbers. His under-ryot is the important man. I would be greatly inclined to enact that there should be for each field or holding one rent at a time. If the occupancy ryot chooses for his own convenience to sublet it, he should not be permitted to make money on it. It is easy to say, we can't interfere with sub-letting; but our courts should not give an occupancy ryot more rent than he pays. It is as a cultivator we wish to protect him, not as land-jobber."

It is a pity the reasons and objects do not dwell more on the question of subletting. It would be impossible to prevent it, and therefore it is right formally to admit it. Mr. Boxwell considers these dangers arising from ryots not behaving as ryots do not seem to him to be very great or pressing, and perhaps it was enough to note that when occasion arose, the legislature could act; but he thinks that one simple and easy condition would make the danger definitely remote.

No ryot should recover for any piece of land a higher rent than he pays for it. This rule, he believes, would do no harm to the man we want to protect, and encourage the strong hereditary cultivator; while it would help to checkmate the land-jobber, who under the guise of a ryot makes his money by speculating in rents.

Mr. Quinn thinks that the balance of argument is entirely in favour of allowing the settled ryot to sell or sublet his holding. These provisions may no doubt tend to produce a class of middlemen, under whom the actual cultivator would have no occupancy rights, and this would be a most undesirable result; but in Behar at least they will not have this effect. As a fact, even in Sarun, ryots' holdings have been frequently sold both privately and in execution of decrees, and these evil consequences have not followed. As regards subletting, Mr. Quinn is of opinion that no legislation can prevent it, and in many cases it is a good thing that a ryot should have the right of subletting a portion of his holding. For instance, if indigo is to be grown on a proper system, it is certainly desirable that the planter should be

able to obtain a lease of the land which he requires from the ryot, and that the latter should get the full benefit of the transaction which he would not obtain if the landlord's consent were necessary. The provisions regarding the landholder's rights of pre-emption are, Mr. Quinn thinks, fair and reasonable, though it is believed advantage will seldom be taken of them.

Mr. Norman, on the other hand, has recorded that he cannot for a moment admit the necessity or advisability of framing the Bill in such a manner as to lead to consequences such as clause 41 of the Statement of Objects and Reasons admits to be possible. It seems difficult to understand how such a result can be contemplated with equanimity, or how an intention can be deliberately expressed of encouraging the growth of another class of idle annuitants upon the land in addition to those which already cumber it. The Bill will undoubtedly enhance the value of occupancy rights which will command a good price in the market, and which will naturally be bought up right and left by the money-lending class. The net results of the Bill, Mr. Norman thinks, will therefore be the extinction of the present class of occupancy ryots and the transfer of the rights to the money-lenders.

Section 59.—The conference were of opinion that in case of a revenue officer refusing to register the contract, an appeal to the Commissioner and Board should be allowed. I do not myself see the necessity for the proposition. It is much more advisable that transactions of the kind provided for in these sections should be complete and final before the local officer making the investigation required under clause (2).

Section 62.—We were unanimous in thinking that the preparation of a table of rates was impracticable. As Mr. Norman has pointed out, these sections on the preparation of a table of rates and produce and of suits to enhance money rents where such a table is in force, contain a Procrustian scheme of enforcing uniformity in matters in which from the nature of things no uniformity exists. The rates in a village are about as numerous as the fields of the ryots, and cannot be classified without an arbitrary disregard of actual facts.

On the details of the procedure laid down in this and the following sections, Mr. Nolan has urged that the revenue officer is generally to fix rates for the different classes of land, leaving it to the civil courts to determine in what class each field is to be placed. This appears a cumbersome and inconvenient method of procedure. The object being to find what rent A, B, and C should pay, it would be best obtained by trusting the whole enquiry to one tribunal. Nothing is gained by compelling the parties to fight out before one court the question what rents are payable for lands of a specified class, and before another under what class the holdings should be entered. If the revenue officer is to interfere at all, he had best proceed under Chapter XI, and fix the rents once for all. As a matter of fact, it was found in the experimental enquiries in this division, that to fix rates of rent, it was necessary first to classify each field. By bringing two distinct tribunals to bear on the one point, as proposed in the Bill there is danger of misapprehension.

Mr. Nolan does not think it would be impossible to fix rates in the abstract without first considering how much of the land will be subjected to each rate, but the adoption of such a course has never been heard of, and the practice would be slovenly and highly dangerous. The confusion would produce the worst results if we put the cart before the horse, and settle the rates in the abstract first, leaving the application to be made afterwards by a different and probably unsympathetic authority.

Section 64 (a).—We are unanimous in considering that "in vicinity" should be inserted after "occupancy ryots."

Section 66.—Under this section, the officer fixing rates is empowered to hear objections but parties concerned are at a disadvantage in framing objections, as the lands not having been classified, they will not know how the rates affect them. A ryot who considers his land of second quality may see no reason to question the rate fixed for land of the first quality and may let it pass unquestioned. When he finds that the moonsif is of a different opinion as to the classification of his holding, there will be no authority empowered to hear his objection to the rate.

Section 69.—Mr. Nolan points out with regard to the provision in this section for the publication of the rates in the Gazette, that they will be found rather to encumber that publication, as there are as many as 50 rates in one village.

Section 72.—It seems unfair to leave it open to make the ryots pay part of the cost of making table of rates, as such tables can only be used for their enquiry to enhance their rents, and are not admissible for the purpose of obtaining a reduction. With regard to the recovery of such expenses in the case of ryots, it would be advisable to recover arrears by the certificate procedure under the Public Demands Act.

Section 75 (c).—Mr. Nolan brought to our notice, and it was thought advisible to note, that the rule as to dividing an increase on value of crop between zemindar and ryot in equal proportions can never possibly operate in any case, for if the old rent was less than half the value of the crop, then the landlord's share of the increase, under the rule of proportion in the proviso would be less than a half, and if the old rent was more, then the landlord's share under clause (*a*) would be less than one-fifth. In connection with this section, we were also unanimously of opinion that temporary lessees should not be allowed to enhance [illegible]

Section 84 of Mr. Reynold's Bengal Rent Bill, which took away from the Judges the power of enhancing ryots' rents, has not been reproduced in this new Bill.

Mr. Henry rightly urged, that the section 84 was introduced on the earnest representation of the officials of Behar, and the arguments upon which their application was based

seemed so conclusive, that the local Government presumably was willing to incur the odium of initiating class legislation in view of the very grave interests at stake. The new Bill omits all reference to this proposal, though having regard to the circumstances of Behar it may be said that any law which does not modify the status of the thikadar or temporary lessee is defective. It is, as has been before represented by me, above all things necessary that the thikadar should be authoritatively relegated to his original position as a mere rent-collector on behalf of the zemindar and not allowed to exercise any proprietary rights.

Section 79.—I am not altogether prepared to support the proposition made to us by Mr. Quinn in connection with this section, but I submit it for consideration. His suggestion was that an occupancy ryot should be entitled to claim abatement on the ground that his rent exceeds the limit prescribed by section 119. He states that the Legislature having admitted the right of an occupancy ryot to abatements is logically bound to reduce the rent when it exceeds the prescribed maximum rent allowed in cases of enhancement, but as the general principle is not to disturb existing rents, it may not be advisable to raise this point in favour of the ryots. An abatement, however, should, he thinks, be allowed where the rent exceeds the limit prescribed in sections 81 and 119.

Section 80(b).—We are unanimously of opinion that this section should be omitted. This sections assumes that the rent of pasture land may be raised on account of the increase in the value of the produce of neighbouring arable land, but not on account of a rise in the price of its own produce. This does not seem reasonable, nor is it clear why the rent of pasture land should be regulated otherwise than that of arable land, *viz.*, by the value of its outturn. For example, Mr. Nolan pointed out that the opening of the proposed railway from Dehri to Mogul Serai, if it raised the value of the grazing grounds on the Rhotas plateau by enabling the holders to send their produce more easily to Benares, would be a proper ground for enhancement. Under the bill, the grazing rents at Rhotas could not be raised on this account, but could be raised if the price of rice had risen, though they produce no rice.

Section 81 (a).—We are unanimous in the opinion that clause (*a*) should be modified in the following manner:—After the words "any contract" should be "and in the absence of any," the word "or" being expunged.

Sections 81 and 82 appear to be likely to bring about serious consequences to a large body of petty proprietors, more especially in the districts of Gya and Shahabad. The first section states that the maximum amount of rent in kind which can be claimed is limited to half the produce, and to this no exception can be taken. The result will be a general reduction of rents which are now and have been for years not objected to such as the $\frac{8}{9}$ths of the landlord's share in kind all over Gya and in parts of Shahabad.

I observe that Mr. Reynolds in his speech in Council mentions with regard to this section that it is to be noticed that, though at present the landlord's share is in some cases $\frac{9}{16}$ths of the *grain*, the whole of the straw and chaff belong by custom to the tenant, and to give the landlord half the gross produce would therefore be giving him a larger share than he is entitled to. Most absurdly, if we interfere directly as proposed in this section, we shall bring about a total revolution in the nature of these tenures which will lead to much litigation between landlord and tenant. We are also unanimously of opinion that section 82 should be omitted, and that commutation should not be allowed except when agreed to by both parties, under a contract in writing approved of and registered by a revenue officer. The power which has been conferred upon the ryot by this Bill and denied to the zemindar of being able to get his rent in kind commuted to a money rent to be fixed at the discretion of the court will have the effect of reducing bhouli tenures at least 50 per cent—a reduction which in many cases may mean absolute ruin to the petty proprietors. With regard to Chumparun Mr. Henry rightly, I think, observes, that having regard to the nature of these bhouli tenures, the circumstances under which they are as a rule created, and to the fact that this cultivation is taken up by the ryots as a speculation as something over and above the area of land upon which they depend for the food crops which are to keep them through the year, no sweeping provisions of this nature was required. In many places the petty proprietors are almost entirely dependent upon the proceeds of their bhouli rents, and the enforced commutation of these rents into a money payment, to be determined by the courts, will be felt by them as an intolerable hardship.

Section 87.—We are unanimous in thinking that this section should be omitted altogether as inapplicable to Behar.

Section 88, chapter VIII.—We disapprove of the term "ordinary" ryot, and we would prefer to call ryots treated of in this chapter simply as "ryots." This point has been taken up by Mr. Reynolds in his speech on the Bill.

Section 90.—I express the unanimous opinion of the conference, in saying that freedom of contract should not be withheld from a zemindar giving land to a new and possibly an unknown ryot, and we recommend therefore that in this section 90 the words "subject to" should be adopted instead of "notwithstanding."

It is of course understood that such contracts will not, under the provisions of the Bill, bar the accrual of a right of occupancy; also that on the understanding that freedom of contract is permitted, we have no objection to compensation for disturbance under Section 93 (*b*) which can now only take place in the absence of a contract to the contrary.

With regard to this section 93 (*b*) we are of opinion that in the absence of such a contract, compensation for disturbance should not be granted as a rule, but only left optional with the court up to a limited amount.

Section 100.—In connection with this section I have to submit a proposition made by Mr. Henry which was approved of by us, *viz.*, that it was very necessary that the different classes of receipts should be on different coloured papers. In the majority of cases where the cultivators are illiterate, it is doubtful whether they will be able to ascertain for themselves whether the provisions of the law are being complied with. The proposal which would solve a practical difficulty in a practical way has however the disadvantage of being too obvious and rude and expedient to find a place in an elaborate Bill. But it seems desirable that it should be declared that receipts in full, which are known as 'farkhatti,' should be on paper of a particular colour, receipts in part being on paper of a different colour. The expedient would enable any man, however illiterate, to understand at once whether his receipt was in full or in part. It is an expedient that would remove a great deal of the friction which now exists, and would do much towards inducing the ryots to pay their rents. There are innumerable occasions when the ryots have been unwilling to pay their rents, because they had no confidence in the putwari, and dreaded that he would insert in the receipt an entry declaring that the payment received was partly due on account of arrears of previous years. If the ryot were in a position to say "give me a receipt on paper of a certain colour for a particular period, and I will pay you so much", the issue between the parties would be intelligible to both, and would form a basis upon which to effect a settlement. Under existing circumstances the receipt is to the ryot a scroll upon which are some mystic characters, which he has learnt by experience to know may very often be turned to his disadvantage in suits before a determining tribunal. To facilitate the use of such receipts, the forms might be sold at Government treasuries at cost price.

Section 101.—Sub-section (2).—We are unanimous in thinking that this sub-section should be omitted altogether, and as a necessary consequence, the words "or statement" in section 102 (3) should also be omitted. The necessity for a landlord retaining the counterpart of receipt in which under the Bill all details are to be recorded is obvious, but not so the requirement that a counterpart of the statement of account should be *retained* by the landlord under a penalty for failure. It should be optional with the landlord, for it can only be for the defence of his own interest on the contingency of a dispute that he would require to produce the counterpart of such a statement. It is to be noted also that there is no procedure given for adjudicating the fine, or stating what court is to do so.

Section 103 (a).—There was some discussion on the provisions of this section. The majority preferred to leave the section as it stands, but Mr. Henry and I concurring were of opinion that the section should be modified. We view with some apprehension the increased facilities which are afforded by the proposed Bill for the deposit of rents in public offices. Under the existing law a ryot can only deposit his rent under the sanction of a formal statement that he has tendered his rent to the landlord who refuses to accept it, but under the proposed law he can pay it into court practically whenever he feels disposed to do so, as receiving officer has no grounds upon which to test the correctness of the depositor's explanation.

It is possible to imagine the case of a large proprietor who happens to be on bad terms with his tenantry. Each tenant will, unless the expense of so doing is so large as to exercise a restraining effect, save himself the trouble of going to the zemindar's cutcherry, and at the same time gratify his own instincts of dislike of paying his rent into court. Under existing practice the withdrawal by zemindars of their rents is a tedious and expensive process, and one that throws great clerical labour on public officers. If these provisions are carried into law, special procedure rules should be passed simplifying the measures under which deposits can be withdrawn.

Imposition of any heavy stamp duty on applications for permission to deposit rents in court, would in practice nullify the provisions of the law, while at the same time if the process is made overcheap, ryots may resort to it in such numbers that the clerical work thrown on the public officers will be excessive. Under the best devised arrangements, this procedure must cause both trouble and expense to the smaller landlords who are not permanently represented at the public offices by muktears or agent.

Section 112.—We strongly approve of the provisions of this section.

Section 113.—Mr. Grierson pointed out that a difficulty would arise when there were a number of rival claimants to the title of either party, *e. g.*, when there was no doubt as to who was the ryot, but there were two rival claimants to the title of the landlord; or when the landlords consist of a number of shareholders disputing amongst themselves as to the amount of their shares. It was considered by us that the Collector might act also on the application of the Magistrate or the sub-divisional officer when a breach of the peace was apprehended. I would submit that a provision to this effect should be added.

Section 116.—In this section provision should be made for the use of the certificate procedure in the case of the ryot.

Section 117.—Messrs. Boxwell and Quinn approved of this section as it stands, and consider the provision essential to check existing abuses; but they would not object to the importation of a corresponding penalty on a ryot who removes a crop without giving the landlord the opportunity of having an appraisement or division made of it.

Messrs. Norman and Grierson consider that a remedy had already been given under section 112; at the same time they were not prepared to argue for the total omission of section 117. They would, however, be strongly against it unless the ryot was also punishable for cutting and carrying away the crop against the will, or without the knowledge, of the

landlord. They would either have both penal provisions, or neither. I am myself strongly opposed to the section as it stands, and consider that the present Bill affords the landlord no means of protecting his interest in bhaoli tenures in regard to the bhowli crop in the case of a dishonest tenant, and therefore the provisions of section 117 which make *any* interference on the landlord's part punishable as criminal trespass might, in many cases, prove to be very harsh.

In the present Bill a certain and speedy remedy is afforded to both parties in the case of any dispute arising in regard to the crop in these tenures, and I think that the landlord should have just as much opportunity afforded him of securing the safety of his interest in the crop without being liable to a criminal prosecution, as the ryot has in securing his. The very essence of the tenure is expressed in the vernacular word used for it "agawr bat'tai," or *watching* and *sharing*, meaning thereby, *each party keeping a watch over the fields that none of the crop be fraudulently made away with.*

By this section the landlord will be precluded from the right even to *watch* the crop through his servants, and an immemorial custom will be needlessly interfered with. If both penal provisions be adopted, there will be a door opened for endless false charges and criminal prosecutions.

Section 118.—We are unanimous in thinking that the provisions of this section for the *danabundi* or appraisement papers to be deposited in the Collector's office, are not necessary and are objectionable. In the districts of Gya and Shahabad and in the greater part of Patna, the filing of these papers will involve the necessity for the entertainment of extra establishments in the offices of the Collectors, if not of additional building accommodation, and, when the papers have been lodged, will be as useless and cumbersome as the putwaris' papers, the filing of which in the same way had been ordered a few years ago, and which it has been since found necessary to countermand. In the provision in this section, there is no check on the filing of *false* danabundi papers, and there can be no check.

Section 119.—The limit prescribed by this section is not a fair and equitable limit on the case of special and valuable crops, such as indigo, tobacco, or sugarcane, which would not fall under the category of staple crops. Some of the Collectors do not think the section requires alteration. Mr. Quinn withdrew from the objection above-mentioned, in the case of settled ryots; but I am not prepared to go with him so far as this.

Section 138.—I object to their being any appeal in this matter, and certainly the appeal should not in an executive point of this kind be from the Collector to the Judge. In these days the Collector is likely to be an officer of greater experience than the Judge. The analogy of Magistrates and Judges does not hold, because Magistrates of districts do not usually try cases. The determination of the length of the standard used in a local measure is a question of simple local investigation, and the Collector's finding should be conclusive. It does not seem consistent that when the civil court makes a reference to the Collector for decision on a matter of this nature, the civil court should have the power to reverse the Collector's finding. It was suggested in the conference that the appeal should lie to the Commissioner, but I still adhere to my opinion that there should be no appeal. Such a procedure would only lengthen the proceedings uselessly, and prolong litigation upon a point which on the Collector's investigation should be clear and conclusive.

Section 139.—We consider that to prevent mistakes a special provision should be inserted that a ryot should not be allowed to surrender a portion only of his holding.

CHAPTER XI.

We would record our cordial approval of the provisions in this chapter, and also of those in Chapter XII.

CHAPTER XIII.

Section 167. Sub-section (2).—The charge here for an application for distraint, appears excessive. So heavy a court-fee being imposed, there will be the tendency on the part of zemindars to have recourse to illegal distraint as now. There should be an uniform fee of eight annas. This provision for distraint is the only summary procedure contained in the Bill which enables a landlord to recover his rents expeditiously.

CHAPTER XIV.

Section 188.—It has always been understood that opportunity would be taken of the revision of the tenancy law, to introduce a procedure which would enable suits between landlords and tenants rapidly disposed of. The Bengal Bill, sections 147, 148, &c., proposed to render the patni sale procedure applicable to certain occupancy holdings These holdings could then have been sold summarily without decree on the application of the landlord; notice of arrear being given to the Collector, the defaulter's village, and zemindar's office. The whole responsibility of setting this procedure in motion would have rested with the zemindar.

It would have conferred great relief on the zemindars, and would have enabled them to realize their rents quickly. But it has been lost sight of in the new Bill, which seems not to contain any provisions which will enable rent-suits to be rapidly disposed of. The existing procedure is no doubt abbreviated, the right of appeal curtailed, and to this extent the Bill is an improvement on the existing law; but it does not go far enough in the direction of giving relief to the zemindari class, who certainly may claim that some procedure should be introduced which will admit of their recovering their just rents without incurring delay or expense.

It is also very desirable that in a suit for arrears the landlord should be allowed to include in the same suit any number of ryots of the same class and occupying land in the same village.

Section 199.—We highly approve of the provisions in this section. None of the remaining sections of the Bill call for any remarks.

I must apologize for the delay in submitting this report, but the submission of it came when in this heavy division, I have had very much more than the usual demand on my time for the despatch of business, connected with the various annual reports due at this period of the year.

ENCLOSURE OF COMMISSIONER'S REPORT NO. 484R, DATED 7TH JULY 1883.

Notes on the Bengal Tenancy Bill by the Committee of the Behar Landholder's Association.

PART I.

CHAPTER I.

Section 3 (5).—Why should not the words "he or his predecessors in interest came into possession of it for such purpose" be omitted altogether, and explanation modified thus:—"A holding through a bhagjote ryot will be a holding under this section,"—and, to this extent alone sub-letting allowed.

Should not payment of rent be also made an ingredient of the definition. As the definition stands at present, there is nothing to prevent a trespasser being included in it, if he holds the lands after the trespass for agricultural purposes. The definition should be: "A person shall not be deemed to be a ryot in respect of any land, or to hold that land as a ryot, unless he holds it for the purpose of agriculture, &c., and *pays rent for the same.*" The Rent Commission Bill defined "tenant" as a person liable to pay or deliver rent.

Section 3 (6).—"Under-ryot" means tenant holding land whether immediately or mediately below a ryot. Will not this definition bring in a large chain of under-ryots, and give some amount of legislative sanction to subletting by these people? The word "mediately" might better be omitted.

Section 3 (9).—Landlord means a person or a number of persons immediately under whom a tenant holds. A tenant, however, includes an under-ryot. Will not the occupancy ryot be thus a landlord with respect to his under-ryot?

Section 3, Clause (14).—Agricultural year, where the Fasli year prevails, commences, for purposes of agricultural settlements, &c., on the first day of Asardh. The Fasli year of course commences in Ashin.

CHAPTER II.

Section 5.—The principle on which this chapter seems to be based appears to be the assumption that there is a lasting distinction between the lands of a village, some being exclusively appropriated by the ryots and some by proprietors, under the name of *khamar* lands. It will be found that no such distinction exists under the present village custom.

All the waste lands belong to the malik, and he can at any time make them his *zeraat* lands, and the ryot can have nothing to say to this. Again, lands which have been abandoned by ryots, or have in any other way passed into the hands of the proprietors, can be converted into *zeraat*. There is no village custom forbidding this, and it would be an act of spoliation to deprive the proprietor of these rights. In this view a register once made cannot hold good for all time to come.

Section 5 (*1st and 2nd*).—After the word "proprietor" the words "his representative in interest" should be added.

Section 5 (*a*).—Assumes the existence of a village custom, which, it is feared, will be found to exist nowhere.

Section 5, 2nd (*a*) *and* (*b*).—The sentence "have been held as zeraat" is not clear. Will not holding through a ryot come within these words? Yet the provisions of section 49 would point the other way.

Sections 7-13.—Provide for making a complete survey and record of existing *khamar* lands in order to preclude the possibility of future disputes. But where is the complaint on the part of ryots that they cannot obtain lands from the zemindars, the latter having absorbed the ryoti into *khamar* lands? One would have thought that the subject dealt with in this chapter was of sufficient importance to require that careful attention and elaboration which it has obtained, specially when the original idea, which would have necessitated such a classification, is not to be carried out. The fact is that, notwithstanding the provision for the non-accrual of the right of occupancy in *nij jote* land under section 6 of Act X of 1859, zemindars never think of shutting out their ryots from the right, on the ground that they farm their *nij jote* lands (witness the paucity of cases in which questions of this nature do arise). Even in Behar, in South Gangetic districts, dispute regarding *zeraats* is very rare. In North Gangetic districts, question of zeraat lands has doubtless some importance in estates held by indigo planters, or lands in the neighbourhood of estates held by them. To make a law which is specially intended to provide for a few cases may not be inexpedient; and if the operation of the law be confined to these few cases only, people may not have much to say; but it will be a serious matter indeed if, without regard to the importance of the subject in any given locality, the law is sought to be applied and register of *khamar* lands made. It would be, as it were, opening the eyes of people to a class of dispute with which they are not yet familiar,

and this enlightenment they can only gain at no small amount of expense and trouble to themselves. The survey, the letting in of a host of survey underlings, ameens, chainmen, *et hoc genus homines*, should not be lightly thought of, and thus driving people to appeals up to the Board of Revenue, and ultimately to Government, for evils which are more imaginary than real.

Perhaps it is not meant that all lands not in the occupation of ryots on the date when the survey party enters the village will be treated as *khamar* lands. The definition of *khamar* lands precludes such a supposition; yet the ryot will be a village Hampden indeed, fighting for the sake of principle, and spending money after such fight; who is expected to contest the landlord's demand of entry of such land in the *khamar* register. Even if such Hampdens there are, the legislature would do better than to invite them to fight. Litigation in this country means ruin; it entails much more than legitimate cost; and the legislature, whose only motive is the good of the people, should think twice before opening out a fresh flood-gate of litigation.

Then there is the question of cost. The executive machinery required by the law under this chapter will have to be paid by the zemindar and the ryots. The expenses in some cases of the survey, &c, will not be a trifle. On the score of expense alone, if not on any other ground, the enactment of this chapter appears inexpedient.

Do not the road cess returns now, to some extent, furnish the information required by this chapter?

Sections 10 and 11.—The period of one month provided for appeal to the Commissioner and the Board of Revenue under these sections, is rather short.

Section 12.—On what ground or grounds will the Local Government proceed under this section?

Section 13.—It is intended to give a stereotyped character to these registers, and this will trench against the zemindar's proprietary right and village custom, under which all the waste lands are his, lands abandoned by ryots are his, lands acquired by alluvion in many cases are his, and he is at liberty to make these lands his *zeraat* without any reference to the ryot or his right.

CHAPTER III.

The only class of tenure-holders who were allowed to hold at fixed rates were those istemrardars or mokarariars who had held their lands at a fixed rent for more than 12 years previous to the date of permanent settlement. Even they were not protected against a Government farmer. No other class of tenure-holders were entitled to hold at fixed rates. Act X of 1859 first made an innovation in this respect. Under that Act, the privilege of holding at fixed rate was given to tenure-holders who had held at a uniform rate from the date of the permanent settlement, and the presumption was to be made of uniform fixed rate if the tenure-holder could prove that he had paid at such fixed rate for 20 years before the commencement of the suit. Even now, when reference is made to the rights of parties as they existed at the date of the permanent settlement, and it is proposed to go beyond Act X of 1859, few zemindars would perhaps cry for the repeal of the privilege given under that Act to tenure-holders; but they have good reason to complain of the presumption which now, when strictness is observed in the matter of granting receipts, and greater strictness is to be provided for by the Bill, would place it in the power of every tenant to ask for such presumption in all cases, and thus to shift the onus of proof. Mr. Reynolds in his Bill proposed to carry back the ryot to proof of an uniform payment of rent to 20 years before 1859. The equitableness of this provision was undoubted.

The Bill now proposes to raise the presumption of proof of uniform payment of rent for *any* period of twenty years. A ryot is sued in 1883. He proves uniform payment of rent from 1840 to 1860, and does not go into proof of such uniform payment for the last 20 years before the commencement of the suit. The presumption as now proposed under the Bill will be against the ordinary rules of presumption in such a case.

Section 14.—Refers also to ryots with fixed rates of rent. Section 14 and section 18, and other sections in Chapter III, come together to apply to the same class or classes of persons. If section 18 applies to ryots, the grounds of enhancement in cases of a particular class of ryots holding from the time of the permanent settlement will be different from the grounds in cases of ryots described in Chapter V. This will be entirely new. In paragraph 13 of the Object and Reasons it is said that "the term tenure-holder, as used in the Bill, is defined in section 3 (3) and (4) to include what are commonly known as undertenure-holders—that is to say, darpatnidars, sepatnidars, darijaradars, and such like; and also tenants of the class hitherto known as ryots at fixed rates. The inclusion of tenants of this latter class in the definition is convenient from the draftsman's point of view, but is, it is believed, otherwise of little importance, inasmuch as the incidents which attached to their holdings place them to all practical interests and purposes on the same footing as tenure-holders." Again, in paragraph 20 the alterations which it is proposed to make in the existing law regarding tenures are not of great importance.

Section 14.—Converts the present ryots at fixed rates into tenure-holders, but as already explained, *supra* paragraph 13, the change is unimportant.

The change would be unimportant if section 18 would not apply. It may be said that as only ryots with fixed rates would be tenure-holders, ryots not with fixed rates would not be entitled to take advantage of the provisions of this chapter. The point, however, is not clear. It should be clearly stated that the provisions of section 18 will not apply to ryots.

The uncertainty noted above is to some extent attributable to the use of the term

'tenant,' 'tenure,' and 'tenure-holder.' Tenant is defined by a negative. It does not include any person who is not a tenure-holder, ryot, or under-ryot, or the tenant of a bastu land. It may include them, or some of them, and it may exclude some, as certainly section 14 does. The definition simply excludes people who are not of certain classes. The term 'tenure' includes an under-tenure, and the interest of every tenant of the class referred to in section 14; and tenure-holders mean a person or a number of persons owning a tenure.

Section 20.—The provisions of this section appear to be inconsistent with the declared policy of Government to better the condition of ryots. Why should not the benefit of section 14, and the presumption under section 15 be given to ryots in Government estates? Surely ryots in Government estates should not be placed at a disadvantage as compared with their neighbours living in zemindari estates.

Sections 22, 23, and 24.—Lands have been added to a tenure by alluvion. The alluviated lands will form a part of the original tenure, or will be a tenure by itself. Rent in such a case is nominal at first, but when the alluvial deposits are fully formed, and land acquires a greater degree of fertility, the rent payable and paid is fully equal to the degree of such fertility. The ryots, under the circumstances of the case, do not grudge to pay such full rates, notwithstanding it may be four or five times the nominal rent they had paid at first, and the increase is made all at once. The double limit, the gradual enhancement, and 10 years' rule will tell very hard in such cases, and this without there being any justifiable necessity for it.

These limits will also tell against the landlord's making any improvements in his estate. An estate yields only Rs. 500 at present; with improvements effected it can be made to yield Rs. 2,000. The improvements cost, we will suppose, Rs. 20,000 in five years. If the zemindar chooses to wait for the increase until the whole outlay has been made, he can get only Rs 500; whereas interests at 5 per cent. on the rent of the outlay will be something like Rs 1,000. If instead of waiting so long, he takes the increased rent from the first year, he debars himself from any future increase for 10 years.

Section 25.—Why should not a right of pre-emption be given to the proprietors in cases of sale of tenures?

Section 27.—Tenure does not include occupancy holdings. Evidently it is not intended that the transfer of an occupancy right should also require registration in the zemindar's sherista. Is there any reason why this should be so? These new rights proposed to be made transferable should not be placed on a better footing than tenures. If registration were to be made compulsory in this case also, the landlord might, on the application made for registry, either claim his right of pre-emption, or might choose to register on the receipt of the fee.

Section 28.—Appears unmeaning. It would be harassing to parties. Why should not the transferee of a tenure apply in the first instance to the landlord? The section should be omitted.

Section 34.—Or "*that of his agent*" should be added after the word 'his hand.'

Section 45.—As the intention appears to be to rehabilitate the *khudkast* ryots of old, residence should also be laid down as a condition for acquiring the status of a settled ryot. If this suggestion be adopted, perhaps it may be necessary to retain a section similar to Section 6 of the present Act, with respect to *piekast* ryots. Thus, while the resident settled ryots alone will have a right of occupancy in ryoti lands under Section 47, the same right will not accrue to *piekast* ryots, unless and until they have held such ryoti lands for 12 years.

"*Held land, as a ryot, ryoti lands.*"—Under Section 3, clause 5, "a person shall not be deemed to hold land as a ryot, unless he holds it for agriculture, horticulture, or pasture, or unless he or his predecessor in interest held it for such purpose."

A person shall be deemed to hold under this Section, though he may sublet it.

Why should not the words "he or his predecessors in interest came into possession of it for such purpose" be omitted, and the power of subletting restricted to such cases and to such places where it obtains now under custom, or where it is exercised only through a *bhag jote* system.

Either the power of subletting should be done away with, and the ryots confined to their legitimate occupation of agriculture, horticulture, &c., or the power to sublet being given, under-ryots should have all those advantages now proposed to be conferred on ryots. There is no reason why, by giving unlimited facility for the transfer of occupancy holdings and their accumulations in a few hands, the Legislature should create a class of petty zemindars who, in their relation to actual cultivators, can only prove worse than any greedy rack-renting zemindar that might have gone before them.

But it is more when Section 45 is taken in connection with Section 47, that we find greater need for the adoption of the suggestion noted above. A co-owner, an ijaradar of a part estate, can acquire a right of occupancy. These men, by the exercise of the influence of their position, may buy an occupancy right or otherwise acquire the status of a settled ryot; they will thereafter acquire right of occupancy in all ryoti lands of the village from the date of their holding. The European indigo-planter will acquire the status of a settled ryot after holding a bit of land in a village or estate for 12 years, and the dreaded ticadar is oftentimes even now a settled ryot of the village. These classes of people may buy or otherwise acquire a right of occupancy in the entire quantity of lands in a village, and then sublet these lands at pleasure. Yet it is not for the benefit of these classes of men that the changes are proposed. Again, any obnoxious ryot might be introduced in an estate against the zemindar's will under the power of subletting. The right of pre-emption will here be of no avail to the landlord, and subletting will be resorted to as a device to defeat pre-emption.

"*In any village or estate.*"—A large estate in a raj or big zemindari may comprise several hundreds of villages, and under the operation of the law, a ryot who has occupied a bit of land in any one of these villages for 12 years will acquire the status of a settled ryot in the estate, and come to have a right of occupancy with respect to the ryoti lands of all the villages comprised in such estate no sooner he will get into possession, of such ryoti lands.

"*Notwithstanding any contract to the contrary.*"—*Sections 45, 47, 49, 50.*—It is strange that when the ryot is considered *sui juris*, as respects his contracts and dealings with the world around, more than he ever was under the Indian laws, and thus in his dealings with a part-owner of an estate, or an ijaradar of a share, he should be only considered in a state of pupilage in his dealings with the sole proprietor of an entire estate. There may be cases in which the ryots themselves may, for the sake of some advantage to themselves, choose to enter into a contract with their landlord against the provisions of the proposed Bill. The law will deprive them of the power of so doing. Why should not the words "*unless the contract be in writing registered*" be added after the words "notwithstanding any contract to the contrary" in these sections?

An ignorant ryot may be an object of protection of the Legislature, and it may be justified in denying him the power of contract; but is an ijaradar, an indigo-Planter, nay, a co-owner of an estate, the legitimate objects of such protection? Yet these classes of men can be settled ryots, come to have rights of occupancy with all its incidents, and the law will apply to them as to those who are now known as ryots.

Section 46.—Who will be responsible for the zemindar's rent during the period of vacant possession? During the year the zemindar will have no right to make a settlement with any other ryot, and thus the zemindar loses a year's rent. The fact that he comes by an occupancy holding does not signify much, for, on his settling the lands with a ryot, he can only do so on the fair rent fixed in accordance with the provisions of this Act, which, in Behar, means a reduction of at least half the previous rent paid.

Section 49.—Should be omitted altogether when it is intended to have a survey and register of *khamar* lands; or if it is retained, it should be modified as follows:—"Unless he has held it for any portion of that period under a lease for a term, or year by year."

Section 50(a).—The words are very vague, and will lead to litigation. The purposes of tenancy should be confined to agriculture, horticulture, and pasture, and should not be extended further.

(*e*) The question of fair and equitable rates have been discussed separately in so far as the present limitations affect the zemindar's right under the permanent settlement.

(*e*) Should be omitted altogether.

(*f*) The transfer at least should be restricted to *bonâ fide* cultivators, and this can only be done by preventing sub-letting. As regards the question of transferability, the Association, in addition to what they said in a separate note, beg simply to subjoin in this place what they stated in their note on the Bill of the Rent Commission:—

"In the vast mass of literature on rent law, collected together by the labour of the members of the Rent Commission, we do not find a single sentence authorizing the transfer of mere occupancy rights. On the contrary, the rulings under Act X of 1859 and Act VIII of 1869 (B.C.) are against it, and there is a significant passage in Harrington's Analysis, quoted at page 408 of the Rent Report, Vol. II, clearly shewing that the ryots had no such power of alienation even in good old days. The passage is to the following effect:—On the whole therefore *I do not think ryots can claim any right of alienating the lands rented by them by sale or other mode of transfer*, nor any right of holding them at a fixed rent except in the particular instances of *khudkast* ryots, who from *prescription* have a privilege of keeping possession as long as they pay the rent stipulated for by them." (Extract from Harrington's Analysis pages 269, 281, & 301.)

From the above passage we find that the ryots as a body, whether *khudkast* or *piekast* had not the right to alienate their holding by sale or other mode of transfer; that in the particular instance of *khudkast* ryots, who from *prescription* enjoyed certain rights, that right never extended beyond holding at pergunnah rates of rent, and their not being liable to be disturbed in their holding so long as they continued to pay such rent. It is said that the landholder can care for nothing so long as he gets his rents; it does not matter from whom. The very argument which Lord Cornwallis used against arbitrary eviction of ryots when rent was ordinarily rack-rent is now sought to be pressed in favour of purchasers of ryots' rights, under condition of things when rents happen to be no longer rack-rents. The present learned Chief Justice, in his valuable minute on the proposed new rent law, printed at page 380 of the Rent Report, Vol. II, thus disposes of this argument:—

"But assuming this to be the true view of the matter, what becomes of the justification for invading the landholder's rights, if the ryot is to be allowed, as soon as he has acquired his right of occupancy, to get rid of it altogether? If the equity to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity if you allow the ryot to transfer his interest?

"It seems to me that this view of the zemindar's position is rather lost sight of in Mr. Field's note; and I think, moreover, that it is hardly fair to suggest that zemindars ought not to object to the transferability of ryot's tenures upon the ground that the measure would be merely unpleasant or injurious to themselves.

"It strikes me that this is just the ground upon which zemindars, or any other class of men, are perfectly justified in objecting to any public measure. And considering that in this instance the Legislature are dealing substantially with the two great branches of the agricultural interest—landlords on the one hand and tenants on the other—the former have at least a right

to insist that no measure ought to be passed which would be *unpleasant* or *injurious* to them, unless some solid advantage is to result from it to the general public."

It is positively injurious to the landlords, for, not to speak of the *unpleasantness* of having ryots installed against their will they become losers to the extent by which the ryots gain; if instead of the ryot's selling his right of occupancy to a stranger, a zemindar could give the right to the same party With the ryot's *consent*, the zemindar would obtain a share of the money value of such right, the consent of both being necessary under the present law for a valid transfer.

Considering the question in a ryot's point of view, the learned Chief Justice says:—"I should have thought that the most effectual way of protecting such people and preventing them from wasting their substance would be to secure them a permanent interest in their property, by prohibiting the alienation of it in any shape or way" (Page 38', Vol. II, Rent Report.)

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It is now generally admitted that the poverty stricken condition of the Deccan ryots, for whose special relief a law, which trenched against the rights of a class and which ignored all private contract, was enacted only last year, was owing, among other causes, to the transferable nature of their tenure. The following quotation is taken from a letter dated 23th February 1879, from the Secretary to the Government of India, to the Secretary, Government of Bombay, circulated along with other papers for opinion on the Deccan Ryot's Relief Bill:—

"(14) Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India), there is undeniable evidence in the report before us that the very improvements introduced under our rules, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

"(15) The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure—marriage ceremonies. Recourse to the money-lender became the more frequent than before, and the class of money-lenders competing for custom increased in undue proportion"

It is said that the Bengal ryots are not to be judged by the standard of the ryots of Deccan or other parts of India, but whatever point of difference there may be between the ryots of Bengal Proper and the ryots elsewhere in India, and whatever advantage the former may have over the latter in their habit of prudence, the same can by no means be safely asserted with respect to the Behars. With them, with landlords and tenants alike, there is unfortunately no lack of the great stimulant to Hindu expenditure—marriage ceremonies

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If, again, Bengal ryots are not to be judged by the standard of ryots in other parts of India, they ought at least to be judged by the standard of those who are admittedly their betters. Not long ago, the following note by Mr. Hertslet, the Consul at Konigsberg, on the practical working of the German land system, went round the newspapers:—

"Landed estates can be sold, parcelled out into the smallest free-holds, and disposed of in any manner without any difficulty or expense beyond the contract stamp of 1 per cent. Renting of farms is almost unknown. Agriculturists buy the land, including barns and dwellings and dead inventories, at a price agreed on, pay usually a quarter or a third of the money down, and the rest is hypothecated on the estate, large or small: the hypothec banks generally advancing the money at 5 per cent., which cannot be demanded back, but may be gradually sunk or paid off by yearly instalments. But, notwithstanding the facility of buying or selling landed property, the agriculturists are always complaining, and it is understood that at least two-thirds of them are in money difficulties, and public sales by the courts of law are of constant occurrence. The most of the nominal proprietors have not sufficient capital to work or cultivate property, and most of them are in difficulties when the interest on the hypothecated debt is due. It is also remarkable that, with the exception of a very few estates which are entailed under the law of primogeniture by a small number of the higher nobility, hardly one estate has remained in the same hands or family for fifty consecutive years, and it appears to be hard on a proprietor to sink such capital in landed property which must in most cases be sold at his death."

Even Mr. Mill, who saw nothing but good in the system of peasant proprietorships, says: "Undue sub-division and excessive smallness of holdings are undoubtedly a prevalent evil in parts of Germany and Flanders" (Mill's Political Economy, Vol. I, p. 366).

But, however good the peasant proprietorships may be in countries where they are, so to say, indigenous to the soil, where the habit of the people favours such a system of land tenures, and where as in Norway, Belgium, France, there are existing checks to an overgrowth of population imposed either by law or the salutary customs of the people, it does not follow that we could secure an equal amount of good by transplanting the same land system in Bengal and Behar, where over-population and sub-dividing are the prominent features in the economic condition of the peasantry.* Add to this the chronic indebtedness of our people, and the

* In the 24-Pergunnahs, which are now comprised in the district of Gya, the total number of estates in 1789 was 744, and the number of proprietors 1,160; in 1871 the number of estates was 4,411, and the number of registered proprietors 0,463. In 80 years, therefore, each estate has, on an average, been split up into six, and where there was formerly one proprietor, there are now 18. (Statistical Reporter, Vol. XII, p. 126.) In 1790 there were 1,232 separate estates on the jut-roll of the Patna district, as then constituted, held by 1,280 registered proprietors. Including a net total of 777 new States obtained by transfer from the Gya district, the number of estates on the rent-roll of the district amounted in 870-73 to 6,678. The number of registered proprietors had increased to 37,800. Allowing for the increase in the size of the district by the addition of the Behar sub-division, the number of estates under the Patna collectorate had quadrupled since the original assessment in 1790; and where there was formerly one proprietor, there are now probably 20. (Statistical Reporter, Vol., XI, p. 187). In the district of Tirhoot, the figures are more marked. In 1790 there were 1,321 estates held by 1,939 registered proprietors. In 1871 the number of estates was 11,500, and the number of registered proprietors 73,416 (Statistical Reporter, Vol. XIII, p. 168.) So long ago as 1789, Mr. Shore remarked on the insignificant size of the Behar estates and the poverty of their owners. If sub-division has gone on thus rapidly with estates, it is hard to expect a different state of things in case of transferable occupancy holdings.

danger of the measure becomes at once manifest. While there is to be sub-division in one hand, there is every possibility of accumulation of these small holdings in the hands of capitalist mahajuns on the other, and side by side, with the present race of zemindars as annuitants on their land, there will spring up landed proprietorships of another kind with mahajuns as owners; thus the only good we derive from the measure is to sweep away the present race of our peasants.

It is noteworthy how, when the land question has been a burning one for centuries in Ireland, the introduction of the system of present proprietorships of Belgium and France into Ireland, has not been advocated by those who are best able to pass an opinion on the subject. Emile De Laveleye says :—

"In Flanders you do not find the land sub-divided in the way it is in Ireland, according to Lord Dufferin who has shewn the evils of the kind of sub division practised there. From his description, it appears that in Ireland, at the death of any holder, and often even during his lifetime, the children divided the lands among themselves, each of them building a cottage on it; or, if the tenant has no children, he sub-lets his lands to several small farmers, and allows them to settle on it, notwithstanding the stipulations of the lease. Such breaking up of the land must lead to the most wretched farming and to pauperism on the part of the tenants. As long as the Irish farmer has no better understanding than that of his own interest and of the requirements of a sound economical system, no agricultural policy, neither fixity of tenure, nor even ownership in fee-simple, could improve his condition. Although the population of Flanders is twice as dense as that of Ireland, a Flemish peasant would never think of dividing the farm he cultivates among his children; and the idea of allowing a stranger to settle and build house on it, and farm a portion of it, would appear altogether monstrous to him. On the contrary, he will submit to extraordinary sacrifices to give his farm the size and typical shape it should have.

"How is it that the Fleming and the Irishman hold such different points of view? I think it is partly due to the difference of race, and partly to circumstances. The Celt, being more sociable, thinks most of the requirements of the members of his family, whilst the Teuton thinks more of the requirements of the soil and of good cultivation.....But, supposing the Irishman to become the absolute owner of his farm, would he learn and comply with the requirements of the land. A Flemish farmer's son always wants to have a good farm of his own; he would not put up with a hovel improvised on a potato field. Could the Irishman but be brought to practise agriculture as an art, and not as a mere means of bringing a subsistence from the soil, he would soon abandon the miserable system of sub-division which he has adhered to so long. But how is this taste for agriculture as an art to be imparted to him? To extinguish the influence of instincts or tendencies, whether inherent in the race or the historical product of centuries, would it suffice to introduce an agrarian constitution in Ireland similar to that of Flanders, or, better still, Switzerland? These are questions which I confess myself not in a position to answer; but they are questions which those who have the Irish Land Question to solve ought to face when considering the land system of Flanders." (Cobden Club Essays.)

It is significant to observe that in enacting for the North-Western Provinces in 1873, the Supreme Council did not think it expedient to give a statutory right of transfer to 'right of occupancy'—the mere creation of Act X of 1859 in Bengal as well as in the North-West.

Section 9 of Act XVIII of 1873 (The North-Western Provinces Rent Act) runs as follows:—

"The rights of tenants at fixed rates shall be heritable and transferable.

"No other right of occupancy shall be transferable by grant, will, or otherwise, except as beween persons who have become by inheritance co-sharers in such right.

"When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land, provided that no collateral relative of the deceased, who did not then share in the cultivation of his holding, shall be entitled to inherit under this section."

The tenants at fixed rates are thus defined in section 5:—

"All tenants in districts or portions of districts permanently settled, who hold lands at fixed rates of rent which have not been changed since the permanent settlement, shall have a right of occupancy at those rates, and shall be called 'tenants at fixed rates.'"

Thus occupancy right is not only not transferable, but not even heritable under the law as it prevails in the North-Western Provinces.

Is there any reason why incidents which are denied to occupancy holdings in the North-Western Provinces, either from a regard to expediency or from a regard to the existing rights in that province, shall be attached to occupancy rights in Bengal and Behar? If the ryots of the Lower Provinces are not to be judged by the standard of the ryots of the North-Western Provinces, it should also be borne in mind that the ryots of Behar are not to be judged by the standard of the ryots of the Lower Bengal, and that there would be fewer chances of mistakes if they were to be judged by the standard of the ryots of the North-West.

As regards Behar, the majority of the members of the Behar Rent Commission, who in one respect at least had the advantage over the members of the Rent Commission sitting in Calcutta, that they knew the people of this province better, were of opinion that it is not desirable to alter the existing law on the subject. On a further reference to the members by the President, after the sitting of the Commission was over, it appears that only 4 out of 15 members, being perhaps the original minority, were for unrestricted transfer. It is noteworthy to remark that two of these members are indigo-planters themselves, or persons interested in indigo-planting; the other two, Messrs. Worsley and Finucane, would not allow subletting if transferability of occupancy rights were to be recognized by law. Two other members would only allow transfer to *bonâ fide* cultivators; the other members, being the majority, remained opposed to such transferability.

Horticulture.—In Behar, fruit trees are planted by the ryots in lands for which they pay no rent. When the trees bear fruit, the produce (fruits) is divided under the *bhowli* system half and half. When the tree is sold, the zemindar takes half the price, and the ryot the other half; and the land being cleared, it again belongs to the zemindar, who has the option of settling it with whomsoever he likes, no right of occupancy accruing to the previous tenant in a case of this kind. Horticulture in the mode in which it is ordinarily carried on in this province does not require much labour or expense. Mango seeds are sown here and there, and in 10 years, during which the ryot pays no rents, we have a mango tope, and the ryot enjoys half the produce, *plus* as much more as he can keep away from the division. Sometimes, though of course his right to a share is undisputed, the zemindar does not care for a division; or even if a division be made it is the village *amlahs* alone who enjoy the fruits, or they distribute them among the villagers, the zemindar living at considerable distance. A sale of fruits in a zemindari is a practice which has not yet generally recommended itself to the patriarchal instincts of the landlords of Behar. In the rearing of the mango tope, besides the initial labour of sowing the seed, the only other trouble to the ryot is to protect it from cattle; and no great amount of trouble is even entailed in this matter, for the seeds are abundant, and one seedling wasted, ten can take its place. This is the way, too, in which, besides large mango topes, other kind of fruit trees are reared and held. The tal (palm) is always the zemindar's own under-village custom. Annual settlements are made with pashs at the rate of 1 rupee or 8 annas per tree, and the tree, when cut, belongs exclusively to the zemindar. To allow right of occupancy in all such cases with respect to the trees, or the land on which they grow, would be at once depriving the zemindar of a very valuable property. To allow transferability in such cases, without any regard to the zemindar's right, would be quite contrary to custom. The point should be enquired into and provided for.

Section 51.—The word '*landlord*' is defined to mean a person or a number of persons immediately under whom a tenant holds. Now the right of pre-emption under Section 51 is given to a landlord as defined above. Will the recorded proprietor of an estate be entitled to exercise this right when he has given his estate in jara or tica? and yet this is the time when undoubtedly the exercise of the right will be of the greatest importance. The definition, however, would seem to preclude the proprietor's right in such a case.

Will one of several co-sharers of an estate be entitled to exercise this right? Will he be entitled to exercise this right against the wishes of his co-sharers? These points should be made clear.

Why should not a similar right of pre-emption be given to the resident ryots of the estate, exercisable only in case the landlord refuses to exercise his right.

Instead of the words 'landlord,' &c., "any person interested in the land of the estate may claim to purchase, &c, provided that the claim of the recorded proprietor shall be preferential to all other claims, and next to his, the claim of the person immediately under whom the ryot holds" would do much better. After all, the right of pre-emption given to the landlords will not serve the purpose of checking objectionable transfers. We have seen how, under the colour of subletting, transfers might be effected, and thus a claim of pre-emption defeated. Again, a neighbouring rich and powerful zemindar would find no difficulty whatever to collude with the tenants of a weak neighbour, and instigate them to sell their tenures simultaneously and *en masse*. Not having sufficient money at his command, he will have to allow the lands thus to pass to his hostile neighbour, who gains his ends in effecting the ruin of a weak neighbour by stopping payment of rent.

Sections 51, 53, and 54.—The word 'served' should be substituted for the word 'filed' as used in these sections, for the obvious reason that, though notices may be filed, they may be served too late. And yet the time within which the landlord is to seek for his right of pre-emption is one month from the date of filing of the notice.

Section 56.—The provisions of this section would render the right of pre-emption of no advantage to the zemindar. In cases of successive transfers by the ryots with whom the lands may be settled by the landlords, the zemindar, if he would choose to exercise his right of pre-emption, will simply have to pay very heavy fines for coming between the ryots and their transferees each time such a transfer is made.

If the landlord be a part-owner only, and has the status of a settled ryot of the estate, the provision will not perhaps apply, nor will it perhaps apply in a case where the landlord has filed a declaration under Section 141. When the provision is thus of a very limited application only, why should it not be omitted altogether. If it stands as it is, it will simply lead to litigation, and prevent landlords from exercising a right which it may be necessary for them to exercise at times, to ward off the evil of having an obnoxious ryot (possibly an enemy) inducted in their estate against their will as a settled ryot.

"If immediately before the acquisition of the right by the landlord, the rent of the land was a money rent, the ryot shall be entitled to hold at a money rent fixed in accordance with the provisions of this Act."

It will be found on enquiry, that in Behar in most cases the existing money rent bears a higher proportion to the annual value of the gross produce than one-fifth, as proposed by the Bill. In these cases, when in the exercise of his right of pre-emption, the proprietor has bought a right of occupancy, and settles it with a ryot, the new ryot thus installed will not only have right of occupancy, but will be entitled to hold at a money rent which must not

exceed, under the provisions of the law, one-fifth of the annual value of the estimated gross produce of the land. Thus, with every transfer of the occupancy rights, the existing rates in Behar will be reduced and brought to the level of the lower statutory rates proposed by the Bill. After the passing of the Bill, the ryots may successfully combine amongst themselves to bring down existing rates, and resort to fictitious sales. Not only will the interest of the zemindars suffer by this provision, but, it is seriously apprehended, the interest of the Government revenue as well. It is a fact which will be fully borne out on enquiry that the Government revenue, in cases of many estates recently settled, represents more than a fifth of the annual value of the produce. In the confiscated estates of Gavind Dehri, pergunnah Peru, zillah Shahabad, an area of 398 bigâhs of land under cultivation, the whole amount of rental on which the assessment was determined was Rs. 800. The Government revenue, after the usual deductions for *gilandazi* and collections, has been fixed at Rs. 612, and the estate put up to auction. The auction-purchaser, to whom the estate was knocked down, paid Rs. 7,200 for the purchase. Besides the Government revenue, the purchaser will have also to pay the road cess, the dâk bheri, and public works cess. At the time of the settlement a great part of the land of the estate was held in *bhowli*, so that the rental of Rs. 800 represents half the annual value of the produce, and the Government revenue, including the cesses, more than 6 annas; and yet the Bill fixes the maximum rate at a fifth. Is it again just to the present body of ryots to fix a lower statutory rate than the rates prevalent? Not to speak of other and serious consequences, will it not at once diminish the value of their holdings? Why should a new class of ryots be favoured at the expense of the old? If the existing ryots were wise, they would be the first to protest against a measure thus seriously calculated to diminish the value of their holdings.

Section 56.—"Any person thereafter holding the land as a ryot." Is it intended to include cases other than that of letting the lands by the landlord?

Section 57.—The proviso to this section appears inconsistent with the provision of Section 47. Once the status of a settled ryot is acquired, the person having such status will acquire a right of occupancy in all ryoti lands held by him. And though he will come to have right of occupancy in all subsequently acquired ryoti lands, the proviso will bar such right in ryoti lands which have been longer in his possession.

CHAPTER VI.

Section 59.—Is it at all necessary or desirable that there should be so much restriction on the freedom of contract? If any contract is likely to prove prejudicial to the interest of the ryot, it may be fairly presumed that he will be the last person to enter into it. He is the best judge of his own interests, and if he is not, no amount of legislation can keep him out of danger. As to the limitation, the tabular statement appended will shew how, in many cases, the revenue payable to Government represents full six-sixteenths of the annual value of gross produce. And the zemindar has to pay the cesses in addition. An uniform maximum for Bengal and Behar, and even for the districts of the same province can only prove mischievous.

Is not the revenue officer an already hard-working official that he should have imposed on him this and other works in addition? The determination of the question as to whether the rate is fair and equitable requires some amount of judicial enquiry and some data to go by. Without any disparagement to the ability of our revenue officers, it may be urged that both these will be wanting in their case. Contracts will be registered or rejected according to the individual fancies of these officers.

No procedure is laid down for the registration under this section. But if the procedure be the same as that provided by the registration law, ryots will have to be moved *en masse* to the court of the revenue officer, possibly at some considerable distance from their residence, and they will have to dance attendance in the courts for a number of days, as in all matters the case is at present, before the registration of the contract can be taken up in hand by the revenue officer. The trouble and the cost of the proceeding should not be lost sight of.

The proposal for the compulsory registration of pottahs and kabuliats did not find much favour with the Behar Rent Commission, for the reasons stated above.

If the provisions for compulsory registration by a revenue officer are to be retained, the Legislature would do well to see whether the attendance of ryots *en masse* at the time of registration cannot be dispensed with; and if so, under what conditions.

Section 62.—Most of the objections noted under Section 59 as to the registration of contracts by the revenue officer will apply also to the preparation of table of rates. There are such a diversity of rates prevailing in any local area that the preparation of a table of rates will be found to be simply impracticable, and it will be found, after a great deal of unnecessary expense incurred, that it is unworkable. There will be a whole flood-gate of dispute opened regarding the classification of lands and the rates. If the truth were to be ascertained, it will be found that nothing impoverishes our people so much as these litigations to which they are driven by new laws like the one proposed.

Section 76.—Exception should be made in case of dearah lands. In these cases the amount of rent depends on the alluvial deposits, and if a trifling and nominal amount of rent is charged, so long as these alluvial deposits have not been formed, an amount of rent proportionate to the degree of fertility acquired is at once charged and readily paid no sooner the alluvial deposits have been fully formed. This amount is often more than double the old nominal amount charged. The same objection would apply to the provisions of Sections 77 and 78.

Section 78.—The period of 10 years during which no fresh enhancement is to be made after the rent has been once enhanced, appears rather long and unsuited to a variety of circumstances. Prices may enormously rise, the productive powers may increase without any expense or trouble on the part of ryots, and lands may acquire an additional degree of fertility, as in the case of dearah lands. The period should be shortened to five years.

Section 79.—A ryot who pays as rent half the annual value of the gross estimated average produce of land in staple crops, as all the *bhowli* tenants under the rate of commutation under Section 82 will do, and almost all the Behar ryots, who, under the existing rate of rent, certainly pay more than one-fifth of the annual value of gross produce as rent, will be, as regards the produce of these lands, readily undersold by ryots who under the provisions of the Act, will have their rents determined at not more than one-fifth of the annual value of the gross produce. The ryots who will be inducted in an estate after the passing of the Act, will all thus have an advantage over the old ryots whose existing rates are not to be touched at present. In so far as the amount of rent is an ingredient in determining prices, prices are calculated to fall with low rents, though it is possible that the counteracting effect of greater *demand* in years to come may not absolutely bring it down. If such a counteracting force of *greater demand* does not immediately come into operation, as under the existing condition of things it is not likely that it will for years to come, the effect will be the fall of prices, and the persons who will benefit will be the *consumers*. These consumers will, however, benefit at the expense of the landlords, the receivers of rent. For one effect of the falling of prices under these circumstances will be the reduction of existing rents of occupany ryots under clause (*b*), section 79; and thus, though the existing money rates may not be changed now, they will, under the operation of this clause and the economic condition of things, be changed hereafter and equalized with low rents around (*viz.*), to a rate not exceeding one-fifth of the annual value of the estimated average gross produce fixed under the present Act. Any maximum fixed, without reference to the existing rate of rent in a given locality, is thus calculated to bring down these existing rates to its own standard (*i.e.*), to an equality with itself.

The section also interferes with freedom of contracts. Unlike the provisions in enhancement cases, there will be no limitation to reduction of rent, either as to time or to the amount.

Section 80.—Pasture lands are either the uncultivated lands of an estate, on which grass only grows, or lands in the occupation of ryot, on which other crops not growing in a year, fodder for cattle is grown. In the first case, the lands belong to the proprietor of the estate. The ryots are allowed to graze their cattle on it by sufferance; no rents are charged, and the proprietor can at any time bring these lands under cultivation. There is nothing like commons in the estates of Behar. If such commons had existed at one time, when the village community flourished in all its pristine vigour, traces of these are now lost. At the settlement all the lands of an estate were included in the malguzary lands, and the zemindar had vested in him the fullest domain in these lands, where they were not in the actual occupation of ryots. The old settlement khusrah papers make no mention of grazing commons. In the second case, when the pasture lands are in the occupation of ryot, on which other crops not growing in a year, fodder is grown for cattle, the pasture lands are not separate from the other portion of the ryot's holding, but forms part and parcel of the same.

In most of the years, no portion of the holding is used as pasture lands, and it will lead to much complication if any attempt be made to separate them. The provisions of section 80 would be perfectly unnecessary, if the intention is to provide for these classes of lands. There is scarcely any land in Behar which the ryot holds separately as pasture lands. Greatest hardship to landlords would be the consequence, if any right of occupancy was to be given to ryots with respect to such uncultivated lands, on which the ryot has been hitherto allowed to graze his cattle on sufferance. There is also another class of land on which the ryot grazes his cattle, and these are the dearah lands, wherever they exist on their first formation. In this case, grass or other fodder which has grown, or has been allowed to grow, belongs exclusively to landlords. Ryots are allowed either to graze their cattle, or cut and take them home for purposes of fodder at so much per bigah. The rate in these cases is always settled under contract, and in fact the grass or fodder is bought and sold just like other marketable commodities The provisions of section 80 ought surely not to apply to such cases as these. The provision of this section will only be unnecessary and vexatious.

Section 81.—The limitation of landlord's claim to not more than half the gross produce or its value, in cases where an occupancy ryot pays in kind, or pays as rent, the value of a certain share of the actual gross produce, will touch the existing rates of rent in *bhowli* tenures in Behar. In most cases the landlord's share is now 9 annas out of 16 annas of the produce. There are many estates in the districts of Gya and Patna in which all the lands are held in *bhowli* tenures, and, as far as the settlement papers show, were so held at the date of the permanent settlement. The assessment of revenue in fact was made on the amount of gross rental estimated at this rate. The effect of the limitation proposed by section 81 would be to reduce the income of the zemindars in these cases by a full sixteenth. Where recent investment has been made on the basis of this share in the purchase of zemindaris, and more than the fullest value paid, greatest hardships will be the inevitable consequence.

Section 82.—With reference to this section, the Committee of the Behar Landholders' Association in their note on the report on the Behar Rent Commission said:—

The provisions for the commutation of *bhowli* into *nukdi* rental in cases of occupancy

holders at the option of either the zemindar or the ryot will be a death-blow to the *bhowli* tenure. In some year, it will be the interest of the zemindar to seek for such commutation; in other years, it will serve the ryot's interest better; but it is to be feared that the interest of both will suffer in the long run by such commutation. Payment of rent in kind may not chime in with civilized notions of things; but, nevertheless, a custom which has survived change of ages, and has been handed down from generation to generation, being acquiesced in both by landlords and tenants, must undoubtedly have its uses.*

Year before last was a year of prosperity for Behar and Bengal, but a bumper crop had brought on low prices, and the effect of this was that the ryots paying money rent were unable in many cases to meet the landlord's demand of rent, and the landlords had to borrow on account of the ryots' default to pay the Government dues. Not being able to pay their *nukdi* rents, the ryots of whole villages sought and obtained from considerate landlords the conversion of *nukdi* into *bhowli*. There were many estates in which this happened, and it was this conversion alone which in several instances saved the ryots. Yet the cry is against the *bhowli* system of Behar.

With reference to the *bhowli* tenures, the Committee in their last year's note said:—

The system of ryoti tenures in Behar is very simple and well suited to the peculiar circumstance of this province, where a large portion of the land is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad and indifferent seasons are more common than good ones. The ryots having no capital, and being an improvident race, would be ruined by one or two bad seasons, if they had to pay fixed money rents. There is again the method of storing rain-water and its economical use by means of *ahars* (reservoirs), *alangs* (embankments), *pynes* (water channels), and *bunds*, which are peculiar to Behar. Some crops are raised entirely by means of artificial irrigation. It is essential therefore that the landlord who alone has the means and power to keep a proper supply of water for the village cultivation, should have a joint interest with the ryot in the improvement of the soil. The ryoti tenures, which are peculiar to this province, seem to have originated in this circumstance. It may be that the nature of these tenures makes the ryot a little too dependent on the good-will of the landlord, but the landlord also is dependent in a great measure on the honest exertion of the ryot for the security of his rents. The interest of both are bound up together by the circumstances of the case and the nature of the tenures, and there does not appear to be anything intrinsically wrong in the system. The peculiar advantages which recommend it to the people of this province have to be only set off against any fancied evils, and it will be readily seen that customs which have originated in the necessities of the people, and which have prevailed from generation to generation, should not be hastily condemned or done away with 'by a stroke of the pen.'

The Commissioner of Patna, writing to the Secretary to the Board of Revenue on the 21st August 1858, said:—

"It may very probably be thought by those who have had no experience in this part of the country that payment in kind or the mixed payments which form the peculiarity of the *bhowli* tenures should be discouraged as much as possible, and should not be sanctioned by the legislature; but this would be a very great error. A large portion of the land of this province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad and indifferent seasons are more common than good ones. The ryots having no capital, and being an improvident race, would be ruined by one or two bad seasons, if they had to pay fixed money rents. Under a *bhowli* or *batai* system on the contrary, where the rent is proportioned to the produce, they can always rub on, and if they have not much opportunity of making money, they are tolerably secure from ruin. These tenures are therefore very popular, and when the landlord is a just man, are perfectly satisfactory to all parties. Any attempt to abolish them would create great discontent."

CHAPTER VII.

Sections 83—86.—Chapter VII is doubtless an improvement on the corresponding chapter of the Rent Commission Bill. Yet its provisions are objectionable on the ground that they disregard the existing customs in Behar. The habitable portion of a Behar agricultural village consists of the houses of cultivating ryots and the houses of one or two artizans or shop-keepers. The village site forms no portion of the ryots' holdings, and the cultivating ryots pay no rent for their homstead lands. Their houses in many cases are the property of the landlords, by whom they have been built, though they are repaired at the ryots' expense and labour during the period of their occupation. Neither agriculturists who pay no ground rent,

* One argument against a Metayer tenancy, is that in this case the Metayer's interest for 'improvement' is only half as much as that of a peasant proprietor; but if the interest of the *bhowli* tenant could be thus measured, there is that of the *bhowli* landlord which should also be taken into account; and in the interest of cultivation of Behar, it is a serious matter for consideration whether the landlord's interest should or should not be diminished. Mr. Mill thus replies to the arguments for commutation—"If this transformation were effected, and no other change made in the Metayer's condition—if preserving all the other rights which usage ensures to him, he merely got rid of the landlord's claim to half the produce paying in lieu of it a moderate fixed rent,—he would be so far in a better position than at present, as the whole instead of only half the fruits of any improvement he made would now belong to himself; but even so, the benefit would not be without alloy; for a Metayer, though not himself a capitalist, has a capitalist for his partner, and has the use, in Italy at least, of a considerable capital, as is proved by the excellence of the farm buildings; and it is not probable that the land-owners would any longer consent to peril their movable property on the hazards of agricultural enterprise, when assured of a fixed money income without it." The remark would apply *verbatim*, if we were to substitute Behar for Italy and the *excellence of the gilandazi system* for the excellence of *farm buildings*.

nor the non-agriculturists who pay only a nominal rent, are ejected out of their homesteads which they occupy from generation to generation. This is the custom in Behar—a custom which doubtless originated at a time when the present body of ryots were hired labourers working for the proprietory body. By changed circumstances of the times the hired labourers of the village have now acquired the status of ryots, and occupy a site in the village for a home by sufferance, but are never ejected out of the same. It would indeed be pretty hard to give them a transferable right in lands which they only hold through *sufferance*. The section also interferes with the right of contract.

CHAPTER VIII.

Sections 88—95.—The Committee have already shown that the effect of the provisions of this chapter will be to vest the right of occupancy in all the ryoti lands of a village in any person who may choose to hold it for agriculture or horticulture. A ryot once installed will be a ryot for all time to come. Holding ryoti land as a ryot has been defined. That definition does exclude a forcible inception of a tenancy against the landlord's will. Will a squatter, if he afterwards signifies his willingness to attorn to the landlord for rent, be a ryot under this chapter?

Section 89.—The limitation of five-sixteenths as the maximum of rent for the ordinary ryot as proposed by section 19 has been shown elsewhere to trench against the rights vested in the zemindar under permanent settlement. In Behar as well as in Bengal, as will be found on enquiry, the existing money rent in cases of long-standing tenancy is in many places more than a third. Now, when on the passing of the Bill, an ordinary ryot will be entitled to hold at this privileged rate of five-sixteenths, it may not be absurd to suppose that the old tenants will prefer relinquishing their holdings on the passing of the Bill, and taking as an ordinary ryot. A great disturbance of the economic condition of the village will thus be the consequence.

Section 91.—Why should the service of the notice be made at least six months before the expiry of the year? In lands producing only rubbi and bhadoi crops, the notice in this case, if the agricultural Fasli year be held to commence in Ashin, will have to be served before the agricultural prospects of the year are known. In Bengal, the year commencing in Bysakh, this would have to be done before either the khariff or rubbi has been reaped. Will not a notice of three months before the expiry of the year be sufficient? How is the service of notice to be made in this and other cases? Section 194 refers to summons in suits, and does not refer to notice.

Section 93.—"If in any suit instituted under Section 92, the defendant appears and agrees to pay the enhanced *rent demanded, his agreement shall be recorded, &c*, and he shall be liable to pay from the commencement of the agricultural year next following the *date of the agreement.*" In this case the ryot who does not appear till after a suit has been instituted against him, will have the advantage over one who comes forward and agrees to an enhancement without suit under Section 92, for if the court cannot take up the case instituted only 10 weeks before the expiry of the year, or the summons cannot be served, and the agreement cannot thus be recorded before the end of the year, the ryot will have to pay the enhanced rent from the year next following the date of the agreement, whereas in the other case, the ryot will have to pay such enhanced rent a year earlier.

Section 93 (2) (a) and (b).—It should be taken into consideration that ten times the yearly increase of rent demanded *plus* such sum (if any) as may be declared by the decree to be payable to the ryot as compensation for improvement which is of no value to the landlord, and which in 99 cases out of 100 will not make any perceptible difference in the letting value of the land, will be more than the capitalized value of such increase.

Sections 93, 94, and 95.—The provisions of these sections will have the effect of vesting a right of occupancy in ordinary ryots in all ryoti lands in their holding. Perhaps it will be replied that these provisions are intended to have that effect.

Chapter IX, Section 96.—A ryot holding at fixed rate is a tenure-holder under clause (4), Section 3. Why should a deduction of thirty per cent. be made in his case. The deduction allowed under Section 21 in cases of enhancement of rent of tenure-holders is a profit not more than 30 per centum or less than 10 per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting their rents. Why should an absolute deduction of 30 per centum be allowed in cases of alluvion. The principle on which the deduction is made in both the cases is the same, and the rule should be the same also.

Section 100.—When a separate statement of account shall have to be given to the ryots at the end of the year under Section 101, it is not very necessary that the receipt given with every item of payment of rent should contain all the particulars mentioned in Section 100. With a stupid village patwari, who can scarcely be induced to move out of his traditionary groove, and whom, under law, the landlord is unable to remove, the introduction of such details for every item of receipt will simply hamper collections, while it will make the landlord liable to heavy fines and penalties for the omission of his village servants.

Section 100 (4) and Section 102 (2).—Why should there be a double penalty for one and the same offence.

Section 103 (c).—This sub-section is substantially the same as it was originally drafted by the Rent Commission. In their Note on the Bill of the Rent Commission the Committee of the Behar Landholders' Association said :—"The Bill provides that a tenant who entertains a *bonâ fide* doubt as to who is entitled to the rent payable by him may deposit such rent in the collectorate. The provision appears at first sight to be equitable, but it will ultimately lead to

endless complications. It makes the ryots the arbiters of all disputes regarding proprietary possession. One of the members of the Behar Rent Commission justly observes: "It would be practically placing the landlords at the mercy of their ryots. Some party, whether rightly or wrongly, must always be in possession, and the ryots are bound to pay him rent. By such payment they are also exonerated for all time to come, and the rightful claimants can only recover mesne profits from the person in possession to whom the ryots have paid. A dispute as regards the zemindari title is thus never prejudicial to the ryots' interest; it is sometimes advantageous to them. Greater indulgence is not required to be shown to them by the necessities of the case. It is positively mischievous with respect to the zemindars, for under this proposal, even in case of secure possession, the ryots, specially those inimically inclined or gained over by the zemindars' enemies, may trump out a dispute and cease to pay rent under the protection of law, thus possibly bringing on a sale of the zemindar's property, and his ultimate ruin." The Committee see no reason to change their opinion on the point.

Section 117.—Under custom, the landlord appoints *agoras* (watchmen) in *agarbattia* tenures (which literally means *watch* and *divide*) to watch the crops and his own interest in his share of the crops. One part of the *agora's* duty is to see that the ryots do not clandestinely take away the crops or any portion thereof to their own house without dividing it with the landlord. Will the appointment of the *agora* be an interference under this section? In *agarbattia* tenure no appraisement is made; but the landlord receives his share by actual division after the crop is harvested and reaped. If the ryot removes the crops, or a portion thereof, to his own house without paying the landlord's share, the landlord loses, and unless it is intended that in all cases of *agarbattia*, the landlord is to seek the assistance of the Collector under Section 112, even though the ryot might not have shown any disinclination to divide before the actual harvesting and reaping, surely some power ought to be left in him to watch his own interests. and he ought to be allowed to do this without making himself liable, on the complaint of the ryot, to the offence of criminal trespass. The property in the *battia* crops is under present custom as much in the zemindars as in ryots, though of course, under the definition of rent as given in the Bill, the landlord's share of the *battia* crops will be rent payable in kind by the tenant.

The present custom is that the ryot reaps and gathers the produce in the *khalihan* (threshing floor) where the division is made. Up to this point the *agoras* watch the landlord's interest, and the ryot cannot take the crops to his home or anywhere else, excepting to this *khalihan* (threshing floor). The complaint of so-called abuse of the power of distraint in Behar will be found in the main founded on a misconception of this custom—a custom which allows the landlord the exercise of certain right in defence of what he, under custom and may be under a rough notion of things, knows to be his property. If the concensus of opinion of the ryots could be taken, it would be found that of the two *danabundi* and *agarbatti*, the ryot likes the *agarbatti* best; and if Section 117 be allowed to stand as it is without some provision allowing the landlord to watch his own interests, the *agarbatti* will soon be a thing of the past.

It should at least be provided that this section will not apply to the landlords watching his interests through the *agora* (watch), and that the harvesting refers to the gathering of the crops in the *khalihan*.

Section 118.—Who is to be responsible for the safe custody of these *danabundi* papers? It has to be noted that some years ago, *jummabundis* used to be periodically lodged in the Collector's office in the Behar district. These were big bundles of papers, ordinarily kept in the custody of some petty collectorate clerk (mohurir). Some cases of tampering came to light, and the whole of the papers were very properly burnt.

The provision would doubtless be unobjectionable if, at the same time with its enactment, some administrative reforms be introduced in the Collector's office giving protection to the zemindars against the systematic annoyances to which they and their people are subjected by the official underlings, when they have anything to do with them.

Section 119.—This section has been already commented on along with Section 89. In many cases, just as in the case of the confiscated estates of Shahabad sold in 1862-63, after a reassessment and at full price, Government revenue alone represents something like six-sixteenths of the actual produce. The zemindar has over and above this to pay cesses, collection charges, and *gilandazi* expenses. Where is all this to come from?

Section 121.—The same remark applies as to Section 20. The Collector here will override private contracts, not as in the other sections, for the protection of an ignorant ryot, but for the protection of the Government revenue as affected by a contract which is undoubtedly advantageous to the ryot.

CHAPTER X.

At present, agricultural improvements in a village are all effected by the proprietor. He pays for the *gilandazi* (earthworks) of a village, he constructs *bunds*, excavates *pynes*, makes arrangements for the storage of water in *ahars* (reservoirs), buys water for the rice crop where it is necessary to do so, digs tanks and wells, and keeps the old ones in repair, pays for the construction and periodical repair of the field and village channels, and also for all arrangements for the proper drainage of the land. He has frequent dispute with the neighbouring proprietors with respect to some one or other of these matters, and the cost of the litigation is entirely his. The annual expenditure on these heads is not inconsiderable. The sections of this chapter do not take all these existing facts into consideration, and appear to be intended to provide for circumstances which have not yet arisen. Cursory enquiry will satisfy that the improvements noted above, which are of the highest importance to the agricultural prosperity

of a Behar village, are not and cannot be effected by ryots. In the first place, they have not the means wherewith to carry on these improvements; in the second place, they are more or less of a *general* nature, affecting the agricultural prospects of a whole village, and the execution of works of this kind cannot be entrusted to individual interest of ryots. In thus providing for agricultural improvements by ryots in future, the Legislature forgets that it will materially discourage works of improvement on the part of landlords who alone have hitherto carried them on, and who alone have the ability and the means to carry them on.

With reference to the corresponding section, being Section 29 of the Rent Commission Bill, the Committee noted "Section 29, not being exhaustive, leaves to the option of every munsiff to say, what is improvement in each individual case. The determination of what is improvement in each individual case, and the amount of compensation to be awarded, will lead to bitter and harassing litigations." The same remark applies in all its force to the provisions of this section.

Section 126 (2).—In what portion of a holding will the dwelling-house and out-offices be erected? If a ryot choose to think that the whole of his holding should be converted to that purpose, will not the provision, as it stands at present, justify him in doing so? How can the erection of a dwelling-house be said to be an agricultural improvement?

Section 126 (3).—We will suppose that, contrary to their present method of proceeding, the ryots of a village combine and make a water excavation, called a *pyne*, at a cost of 500 rupees. The expenses when distributed among 50 of them will be 10 rupees a head, yet the benefit reaped with respect to each holding is to the extent of the full outlay of rupees 500: the work shall be, with respect to each of them under this sub-section, an improvement; but it is an improvement which, while if it were carried out for the individual holding, would cost 500 rupees, but when carried out for the benefit of a number of holdings costs each rupees 10. Rupees 10 ought therefore to be the measure of such improvement, yet if the sub-section stands as it is, the measure of improvement would be 500 rupees.

Section 127 (1) (2).—Nothing could be more mischievous than to make the landlords dependent on the good-will of the ryots in the matter of improvement of their village. The lands of a whole village can be converted by the judicious construction of *gilandazi* (earthworks) from *rabijar* (*rabbi* producing lands) into *salijar* (paddy-producing lands). A village can be saved from the effect of periodical droughts by the opening of a water channel (pyne). These are works of general utility to the agricultural population of the whole village, and while ultimately relating to, and benefiting individual holdings benefit the whole village. At present the landlords carry on these works at their own expense in lands for which they get no rents, and which do not form a part of ryot's holding. The proposed law will make the permission of the ryot necessary for the landlord executing works of this kind, and the reason of the rule as stated elsewhere is that the ryot having a greater interest in the improvement of the land should have a preferential right to make such improvements. Undoubtedly the proposed Bill, when passed into law, will make the ryot's interests in his individual holding greater; but after all it will be nothing as compared with the interest of the landlord as the rent receiver of the entire village; yet even in respect of improvement, the interest of the rent receiver of an entire estate, possibly comprising a number of villages, is sought to be subordinated to the interest of an occupancy ryot, the holder, say, of a few bighas of lands. Provisions of this kind will doubtless tend to diminish the prestige of the zemindars in the eyes of the people, but effects of that kind may not be desirable on the score of other interests than that of the zemindar alone.

Section 128.—Is there any reason to allow an ordinary ryot, possibly a mere squatter, to build a house on a part of his holding, nay in the whole, without the landlord's permission except it be to give him a hold on the lands which he had come to cultivate for a year or so? The provisions of this section, and generally of the other sections of this chapter will simply serve to irritate the feelings of the landlords without conferring any corresponding benefit on the ryot or anybody. In the case referred to in this section, it will generally happen that the holding will be situate in a part of the village where it is not possible to erect a dwelling-house. In Behar, the only habitable part of a village, as has been noted before, is the village Dhi which does not form a part of the holding of any ryot.

Section 129 (4).—Cases of improvements of this nature will be scarcely found; yet the Act will have an objectionally retrospective effect. But though improvements by ryots have been, as a matter of fact, *nil*, false claims for compensations will, we may rest assured, be not few.

Section 133.—In a country where even between two neighbouring zemindaries the boundary mark is a mere ridge of earth, and when the field demarcations are periodically destroyed after each flood, the limit of 10 years before a fresh measurement of the lands of an estate can be made, appears to be unnecessarily long.

Encroachments are brought to light by measurements of this kind, and after a lapse of years a good claim is barred as against a trespasser.

It is necessary again to measure, almost annually, the alluvial accretions to an estate, if there be any, and to determine in what quantity of the accreted lands alluvial deposits have been formed. If 10 years' limit of enhancement is not to be made applicable to cases of this nature, it will be necessary also to give a right of measurement to landlords in such cases oftener than once in every 10 years. The circumstances of the case would clearly demand this.

Section 141.—Is not this section inconsistent with the provisions of Section 56? Under this section if a landlord buys an occupancy holding, the occupancy holding shall be presumed to be merged in the interest of the landlord and extinguished during the period of 3 months

mentioned in sub-section (2) unless the landlord proves that he has not intended it to be merged, and after the expiration of that period, be deemed to be so merged and extinguished, unless within that period the person executes an instrument declaring his intention that a merger shall not take place, &c. Now, if nothing of the kind be done, the interest of the tenant shall be effectually merged and extinguished in that of the landlord, to wit, in the case supposed, the occupancy right shall cease to exist; yet Section 56 provides that any person thereafter, *i.e.* (after the merger and extinguishment have once effectually taken place), holding the land as a ryot shall have a right of occupancy in respect of it.

Section 142.—With reference to the similar provision of the Bill of the Rent Commission, Babu Peary Mohan Mukerjee, one of the Commissioners, wrote as follows:—

"The necessity for investing the district courts with the power of appointing a manager for the management of an estate or tenure held by two or more co-parceners, when even a single ryot, or the owner of an infinitesimal share, chooses to apply for such an appointment, has not been made out. The decision recently passed by a full bench of the High Court, recognizing the power of every co-parcener to have his share of the rent apportioned by a suit in court, will remove all sources of annoyances to the ryots of joint estates and tenures, and of disputes among the co-parceners themselves. The proposal for appointment of managers by court is therefore uncalled for. A similar proposition started at the time of Sir George Campbell was looked upon with disfavour by the executive and judicial officers who were consulted about it, and it was abandoned after a thorough discussion of its merits and demerits. It is certainly not desirable that the mediæval passion for superseding the independent conduct of every man's affair by officious legislation in matters relating to land should be revived"

The Committee of the Behar Landholders' Association in their note said:—

"It is to be feared that in districts where the Judges may like to exercise a little patronage by appointing managers, the management of estates will in most cases in such districts pass out of the hands of their lawful owners."

Sections 65, 66, and 67.—The effect of these provisions will be to reduce the real owners to the position of mere annuitants upon their estates. The managers cannot have that interest in the management and improvement of the estates which those personally interested can have; and as it is very essential to the agricultural prospects of this province, specially in estates where *bhowli* tenure abounds, and where it is necessary at seasons for landlords to advance money out of their pockets to the ryots for the successful prosecution of agricultural industry, that such personal interest should be taken, it is to be feared that agriculture would suffer. Nor is it very likely that the managers appointed by the district courts will prove better men than the zemindari village amlahs; the salary which could be given is not likely to tempt a first class set of men, and the men that would ordinarily be appointed as managers carrying with them the authority of the district courts, will, when venal, be not satisfied with the paltry douceurs now received by the patwaris from the ryots. There will again be no check to their corruption and rapacity on the spot, as they will be placed above the control of the landlords, and will be only removeable by the orders of the district courts.

Are not the words (*a*) "inconvenience to the public," or (*b*) "injury to private right" very vague? If the section is to be retained at all, some attempt ought to be made to specify the circumstances which would come under these general and vague expressions.

CHAPTER XI.

There is no reference to existing rates of rent—not a single section in the chapter under which the revenue officer is enjoined to determine the rates paid, and to make this the basis of his settlement. There will be nothing to prevent revenue officers in exercise of the extraordinary powers given to them under this chapter, to reduce existing rates, and thus the rent-roll of a whole village. As such the provisions of this chapter are very dangerous to the interest of the zemindars. If the chapter is to be retained at all, it should be distinctly laid down that the Collector should in no case reduce the existing jummabandi of a village.

CHAPTER XII.

Perhaps the objections noted to the preceding chapter will apply in a greater degree to the provisions of Chapter XII. Whole estates will be in a ferment of litigation after one of these proceedings, and the result will be the impoverishment and possibly the utter ruin o both landlords and tenants.

CHAPTER XIII.

Section 166.—It is sought to make distraint somewhat of the nature of attachment before judgment, and as such the power of distraint will lose all its value. The power has been exercised by the zemindars from time immemorial. It is not, as some suppose, an offshoot of the English law, but rather an offshoot of the power which under the Hindu law, creditors exercised to compel their debtors to make payment of their dues. Even now, the power prevails in the native State of Nepal, thus clearly indicating that it is not one of foreign, but of native origin. The earlier regulations recognized this power, and it is the only one yet remaining in the hands of zemindars to compel payment of rent. The limiting it in the way proposed appears to the Committee to be open to the following objections:—

1*st.*—The power of distraint is only valuable because its action is prompt and swift, Recourse to a distant court for taking the initiative in distraint cases reduces the power to *nil.*

2nd.—Distraint thus becomes mere attachment before judgment, leaving to the ryot the power of taking away all his crops before the distraint order reaches the village.

3rd.—As a matter of fact, the power is very seldom exercised; but its existence in the present form serves as an incentive to the ryots to make payments of rents with due promptness.

Section 167 (2).—The procedure under Section 168 is a very short one; and why should applications for distraint in ordinary cases require the court-fee payable in a suit instituted for the recovery of the arrear therein claimed? The proceeding will assume the form of a regular suit only in cases of contest, and a court-fee may be required with some show of reason in a distraint proceeding when the case has assumed that complexion. It is respectfully submitted here in connection with this matter, that the incidence of equality is not a prominent feature of the court-fee law. The proprietor has to pay an *ad valorem* fee of 7½ per cent. on the valuation of an estate at ten times the Government revenue when he has to sue for possession. The tenure-holder or the occupancy tenant will have to pay this *ad valorem* fee on a year's rent when he brings a suit against the landlord for possession of his holding, and the landlord has to pay the same *ad valorem* fee when he sues for a year's rent.

Section 166 (1).—Will a petition under Section 166 be allowed by a part-owner of an estate, the extent of whose interest in respect of which the arrear is due has been registered under the provision of the Bengal Land Registration Act, 1876? If so, provision ought to be made for the protection of the interest of the other proprietors.

Section 186.—If the section be allowed to stand as it is, it will make the life of a zemindar one of constant peril. When the offence is one of simple omission or of passive acquiescence in certain proceedings of another, the imposition of a fine alone ought to be held sufficient. In the cognate case under Section 155 of the Indian Penal Code, fine is the only punishment provided.

Section 187.—The circumstances under which the local Government would be empowered to suspend the provisions of Sections 166 to 184 in any local area should be clearly laid down by the Legislature

Section 191.—Sections 121 to 127 (both inclusive), 191 to 191 (both inclusive) of the Civil Procedure Code shorten procedure, and there is no reason why they shall not apply in rent suits, specially in suits to recover possession of the land either by the landlords or the tenant.

Section 198 (*b*).—As finality is to be given to decrees and orders (which doubtless will include decrees and orders in appeal) of Judges and Subordinate Judges as in suits in which the amount does not exceed Rs. 100, it is not very necessary or desirable that finality should also be given to the decrees or orders of Munsiffs in suits in which the amount claimed does not exceed Rs. 50.

Section 199.—It will be indeed very hard if, having instituted a suit for his rent, the landlord is driven to another suit by the nature of the ryot's defence. Yet Section 169, clause (3), read together with the provisions of Section 166, would point to this. In place of clause (3) the provisions should be as follows:—"When a deposit has been made under clause (2), a summons shall be served on the person who, the ryot alleges, is entitled to the rent, and if he appears and contests plaintiff's right to the receipt of the rent, the court shall proceed to try the suit as one between him and the plaintiff, and if he does not appear when summoned, the amount of deposit shall be made over to the plaintiff.

There shall be a further decree for costs as against the defendant."

Section 201.—"The agricultural year next following" and "agricultural year next but one following" are perhaps intended to mean "agricultural year" following the date of the institution of the suit, and not the agricultural year following the date of the decree. Under the old law notice of a month or so before the end of the agricultural year was sufficient to entitle the plaintiff to enhanced rent from the beginning of the year, if he instituted his suit for enhanced rent within four months from the commencement of the year. There is no reason why the rule should be otherwise now.

Section 201 (*clause 2*).—Why should discretion be again left to the court to fix the date from which any such decree shall take effect. Is not the time fixed by clause 1 long enough during which the landlord will be deprived of his just dues? It would to some extent be better if clause 1 was omitted, and the matter left entirely to the discretion of the court; but when such discretion is thus meant to be fettered and restricted on behalf of the ryot, its exercise should not be allowed to the prejudice of the landlord.

Section 202.—Is entirely new. What will be 'the reasonable time' under this section? When it is proposed to vest in courts the power of not allowing a forfeiture, but to decree compensation in lieu, why should a request within a reasonable time to the ryot, on the part of the landlord, to remedy the wrong, be again made a condition precedent to the entertainment of the suit. Our courts were apt to be technical in the matter of the notice in enhancement suits, and it is seriously to be apprehended that they would be very technical in the matter of 'request' and 'reasonable time' also. It is at best a matter to be looked into in awarding costs of the suit.

Section 202 (*3*).—It is proposed to vest, by this clause, in the court executing the decree the power to change the nature of the decree. When will the decree become final?

Sections 203 & 204.—Is there any reason, why, when the landlord has made out a proper case for ejectment, the tenant should be treated better than a trespasser or a wrong-doer? The wrong-doer is not entitled to take away the growing crops, but is liable to make good to the party entitled to possession for all mesne profits of the period during which he has kept the rightful owner out of possession.

CHAPTER XV

Does not seem to provide for a case, when the decree for rent has been obtained by a part-owner of an estate, collecting the rent separately for his share with the ryot's consent. There

is no provision in the Bill forbidding a suit of the kind, or a decree being obtained under it. In execution of a decree of this kind, will the part-proprietor be entitled to put up to sale the whole tenure, or holding, and, if so, what steps will be taken to protect the interest of the other co-sharers? 'Section 216 should provide for a case of the kind, and the sale proceeds should not be allowed to pass out of the hands of the court until the other co-sharers receive notice, and they have been paid out all their dues.

PART II.

(1) In this part of the note the Committee proposes to examine the changes made by the Bill with respect to the three main questions of fixity of tenure, fair rent, and freedom of sale, showing by the way how they are inconsistent with the rights of zemindars, as guaranteed to them by the permanent settlement.

(2) To begin with the question of fair rent. It is proposed to limit the enhancement of money rent to one-fifth of the estimated annual value of the produce of land in staple crops in cases of occupancy holdings; to five-sixteenths of such value in cases of ordinary ryot, *i.e.*, ryots not having rights of occupancy; and to one-half the produce in cases of *bhowli* tenures. Viewed in the interests of the ryots, these changes are calculated to do them good; but the objections against these limitations are, that they are so much taken away from the sum of zemindari rights to be given away to ryots.

(3) If one was to examine the point in the light of the earlier regulations, he would find that the zemindars are at least entitled to receive their rents on the pergunnah rates, and this pergunnah rate, if it had been settled from time to time on the principle on which alone the pergunnah rates were determined at the date of the permanent settlement, instead of being, as some suppose, lower than the rates prevalent now, would have been considerably higher.

(4) It is admitted on all hands that, previous to the permanent settlement, the produce of every bigah of land used to be divided in certain shares between the State, the zemindar, and the actual cultivator. The State and the zemindar were entitled to their share no sooner a bigah of land came under cultivation.

(5) One effect of the permanent settlement was to transfer absolutely and for ever, in consideration of a fixed money rent or revenue, the State share of the produce to the zemindars who from that time became entitled to the State share *plus* his own share of the produce of every bigah of land.

(6) The pergunnah rate referred to in the regulations cannot therefore be less than a rate that would adequately represent the State share of the produce, *plus* the zemindar's own before the date of the permanent settlement.

(7) It will be found from the 5th Report, page 16, that this State share of the produce at or about the date of the permanent settlement was three-fifths, the ryot getting only two-fifths.

There are other authorities to show that the State share alone was never, for some centuries preceding the permanent settlement, less than half. The authorities are given below for easy reference—

"In the extensive plains of India, a large proportion, estimated, in the Company's provinces, at one-third by Lord Cornwallis, at one half by others, and by some at two-thirds, of lands capable of cultivation lies waste, and probably was never otherwise. It became, therefore, of importance to native Governments, whose principal financial resource was the land revenue, to provide that, as the population and cultivation should increase, the State might derive its proportion of advantages resulting from this progressive augmentation. * * * This rule is traceable as a general principle through every part of the empire which has yet come under the British dominion, and undoubtedly had its origin in times anterior to the entry of the Mahomedans in India. By this rule the produce of the land, whether taken in kind or estimated in money, was understood to be shared in distinct proportions between the cultivators and Government. The shares varied when the land was recently cleared, and required extraordinary labour; but when it was fully settled and productive, the cultivator had about two-fifths and Government the remainder." (5th Report, page 16.)

"The assessment of Akbar is estimated by Abul Fazal at one-third, and by other authorities at one-fourth of the gross produce; but it was undoubtedly higher than either of these rates, for, had it not been so, enough would have remained to the ryot after defraying all expenses to render the land private property; and as this did not take place, we may be certain that the nominal one-third or one-fourth was nearly one-half. This seems to have been the opinion of Aurungzebe, for he directs that no more than one-half of the crop shall be taken from the ryot; when the crop has suffered injury, such remission shall be made as may have been one-half of what the crop might have been: and that when one ryot dies, and another occupies his land, the rent should be reduced, if more than one-half of the produce, and raised, if less than a third. It is evident, therefore, that Aurungzebe thought that one-half was in general enough for the ryot, and that he ought in no case to have two-thirds." (Minute of Sir Thomas Munro, dated 15th August 1807, quoted in the Zemindari Settlement, vol. I, page 99.)

"Sir George Campbell says the State, before British rule, took from one-fourth to one-half of the gross produce—one-third and one-fifth being the most common proportions. The 5th Report puts the State proportion at three-fifths in fully settled land, leaving the cultivator two-fifths. * * * Mr. Shore gives two different opinions. His earlier opinion is that Government took one-third; but his later opinion puts the Government share at from one-half to three-fifths. Mr. Elphinstone says that one-third is a moderate assessment, and that the full share is one-half." (Tagore Law Lectures for 1874-75, pages 185-86). Sir Thomas Munro, in the minute quoted above, speaking of ceded districts and of the Deccan, says:—"The mode of assessment in the ceded districts and in the Deccan still limits the share of the ryots to those proportions (two-thirds), but makes it commonly much nearer to one-half than two-thirds of the produce."

(8) In *bhowli* tenure, the rate even at the present day is never less than half, but it sometimes is 9 annas out of 16 annas of the produce. At the time of the permanent settlement, it appears that, in the district of Sarun at least, the share was 1 maund 22½ seers out of an estimated produce of two maunds (*vide* Statistical Reporter, vol. XI, page 301.)

(9) To limit the zemindar's rent to anything less than the State share of the produce, *plus* the share which the zemindar claimed as his own before the permanent settlement, whether these shares be three-fifths or any other proportion of the produce, would be not only arbitrary but unjust, and, it is respectfully submitted, an infringement of the permanent settlement

(10) It will be perhaps said that these limitations proposed do not touch existing rates, and leave the zemindars in the enjoyment of his present profits It is clear, however, that the existing rates are not respected in all cases When the maximum of rent paid in kind is fixed at one-half (*vide* Section 81), it proposes to reduce the zemindar's existing rate in *bhowli* tenures from nine-sixteenths to one-half. Nine annas out of 16 annas in both *danabandi* and *agahattia* tenures is a very common rate in the districts of Behar, and the proposed law, by reducing such rates, will at once bring down the amount of zemindari profit in such cases There are vast estates, both in the districts of Gya and Patna, where these kinds of tenures prevail, and the enforcement of the law will at once bring down the profits by a full sixteenth

(11) Nor is it sufficient to say that these limitations do not touch existing rates, or bring down existing profits, but that they will only apply in future to cases when the rates are exorbitantly high It is clear from what has been submitted before that no rates can be legally said to be exorbitant, so long as it is lower than the State share of the produce *plus* the zemindar's share The rights guaranteed to the zemindars by the permanent settlement were not to last for a century, but for all time to come, and it is a clear interference with such rights to limit them to their present income for all time to come, when, if the limits were not thus imposed, they would be entitled to more

(12) The reservation of power to enact laws for the protection and welfare of ryots cannot, it is respectfully submitted, cover a case where the object is to curtail a part of the zemindars' rights to be given away to ryots. If a measure like this is required for the welfare of the ryots, it should not be carried out at the expense of the zemindars alone They should at least get proper compensation for what is thus taken away from them The selling value of zemindari lands, in Behar, is 25 to 33 years' purchase, *i e*, investment in lands is dearer than in Government securities Such investments are then only made in hopes of prospective increase It need not be said that the limits proposed will be at once ruinous to the individuals who have thus invested, and their number cannot be small

(13) It will again be perhaps urged that though theoretically the zemindars were entitled to the State share *plus* their own share, the total which could not be less than *three-fifths* of the produce of every bigah of land, they have always practically contented themselves with a smaller share. This, which in the face of a growing demand for land, should be taken as an indication of the good-will of the zemindars to their ryots, ought not surely to be pressed as an argument against them. The fact shows further that it were better to leave things to themselves than to try to regulate them by law

(14) One other objection will perhaps be raised. It will be said that at the date of the permanent settlement, the State share had been commuted to money. But the question is—how was this commutation made? Was it not on a consideration of the actual produce of the land? and is it not a fact that in several Behar zemindaris, at the date of the permanent settlement, rent used to be collected in kind? and it was with reference to the gross produce thus collected that the assessment was made.

(15) Next as to the question of fixity of tenure. Lands are classed under the Bill as ryoti and *khamar*, and occupancy rights are proposed to be given to all settled ryots with respect to all ryoti lands under their cultivation A settled ryot is defined to be a ryot who has held ryoti lands in a village or estate for 12 years The ryot will get occupancy rights with respect to khamar lands also, if he holds them for 12 years (*Vide* Sections 45, 47, and 49 of the Bengal Tenancy Bill) The ryot will not contract himself out of occupancy rights, nor will any such contract be binding.

These sections will doubtless benefit ryots, as it would doubtless benefit them if the Government were to pay them 500 rupees a-piece out of the Government treasury. As between the zemindar and the ryots, the law is entirely one sided and in favour of the ryots.

(16) It is needless to recapitulate the arguments showing how this trenches upon the rights of zemindars as guaranteed to them by the permanent settlement. It confers occupancy rights upon all the existing ryots—*piekast* and *khodkast*-alike Whereas the restrictions, *as regards ryots*, with respect to the landlord's power of letting out lands to whomsoever he pleased, as vested in him by Section 52 of Regulation VIII of 1793, referred only to *khodkast* ryots (Section 60), and to certain existing leases, till the expiry of the term of these leases.

(17) It is plain, however, from the express wording of Section 60, which protects the right of *khodkast* ryot, that its provisions were not made applicable to Behar.

(18) The proposed Bill, however, following the precedent set before by Act X of 1859, does not observe any such distinction between *khodkast* and *piekast* (Dahis and Pahis of Behar), though of course the enactment of Act X of 1859 has been found fault with on the ground that it did a great wrong to the general body of *khodkast* ryots.

(19) The introduction in an extensive scale of a great body of *piekast* ryots, who will naturally be under the influence of men in whose estates they live, and these men, sometimes the landlord's enemies, will be a source of immense deal of trouble to the landlord in whose estates these *piekast* ryots will come to have a transferable right of occupancy by the operation of the law.

(20) The landlord has nothing to gain by ejecting a good ryot, from whom he punctually gets his rents, yet he can for good reasons complain of an unwarrantable extension of occupancy rights, as it proposed to be done by the Bill.

(21) It is thought that occupancy rights, even as they were under Act X of 1859, were valuable properties, and any law which would at once vest in the mass of ryots the occupancy right proposed to be made much more valuable under the Bill, will be depriving the landlords of the letting value of such occupancy rights.

(22) No statistics are available to show to what extent occupancy rights have accrued to ryots; reliance was made in the course of debate on some guesses. But whatever may be the probative force of such guesses, it cannot be denied that a great body of ryots, from whatever circumstances this may be owing, are yet tenants-at-will, while others are so, if not with respect to all, but a part of their present holdings; and the effect of the change will be to vest at once to these ryots a right of occupancy.

(23) Some vague and indefinite customs are referred to in justification of this extension of occupancy rights, but what this custom is, nobody has yet cared to define, and if it points to anything, it points to residence in a village, to membership in a village community, as conditions for the acquisition of certain privileges.

(24) Both these points are lost sight of in the present attempt to extend occupancy rights, and it may be doubted whether in this unwarrantable extension of occupancy rights, the Legislature in 1883 is not perpetrating in a stronger degree the injustice and wrong alleged to have been done to the *khodkast* ryots in 1859.

(25) It is not true that the extension of the right of occupancy deprives the landlord merely of his power of eviction, but, as we have seen, deprives him of the letting value of such occupancy rights. Even a power of eviction, though not of much use in itself, has a value in another way. Acting as a *terrorem*, it induces the most unpunctual of ryots to make punctual payments of their rents.

(26) If fixity of tenure, as proposed by the Bill, is calculated to tell against the interest of the zemindars, it is this fixity of tenure, coupled with its incidence of freedom of sale, that it is to be feared, will tell strongly against the interest of the landlords and tenants alike, more specially of the unthrifty tenants of Behar.

(27) It is the fashion to ridicule prophecies of this kind. The unthriftiness of some classes of Behar ryots is, however, a fact; the extravagant scale of their marriage expenses is also a fact; and with a valuable right in their right of occupancy, mahajuns will be found in their neighbourhood too ready to supply them the money wherewith to make an extra show. It is easy to divine that the ryots sold out of their holdings and homes will be the result of the care now bestowed on them.

(28) Under the Bill, the zemindars, with regard to new tenancies, will only be a threeanna proprietor of the land, the ryots thirteen-anna proprietor of the same, and with an ignorant class of men, to whom knowledge of laws and benefits conferred on them by these laws permeate only, if it permeates at all, years after the laws have been in force, speculators will not be wanting who will think it a nice investment to go about villages to induce them to sell their rights, and thus instal themselves in a thirteen-anna pucka zemindari, the creation of the law of 1883 as distinct from the zemindaris of 1793.

(29) In these newly-created zemindaries, for the present at least, all sorts of protection will be denied to under-ryots; no rights of occupancy will accrue to them, the veritable cultivators, and no restrictions will be imposed on the freedom of contract of those who will be their landlords

(30) If thicadari system is an evil in Behar, this occupancy right ryot zemindari system will be worse.

(31) It will be perhaps replied that if it comes to this pass, the Legislature will again interfere to prevent the growth of the evil. This is true, but does it behove an enlightened and well-meaning Legislature to take all this risk for some possible good to the ryots? An experiment at least might very well be tried, and fixity of tenure coupled with freedom of sale granted to ryots of khas mehal estates, and the working watched for a few years before it is thought expedient to extend such rights *en masse* to the present body of Bengal ryots.

(32) Perhaps it will be said that transferability of occupancy rights is growing day by day more general. The statistics are not available to the public. Such of them as were published in the Rent Commission report do not all appear to relate to occupancy rights, and stray cases here and there do not prove or establish a general custom. If such a custom has grown up, we may rest assured that it will take care of itself; the Indians are very tenacious of their customs.

(33) As to the right of pre-emption given to the zemindars, it is to be observed that they will have to pay for the fancy of choosing their ryots Sometimes this choosing is of absolute necessity to ward off an evil, but it will be an evil to which the zemindars will be made subject under the Bill proposed, and it is somewhat in the nature of a double injury to bring on him an evil, and then to tell him to ward it off by paying for the purchase of a right which is of no possible advantage to himself, excepting it be that, contrary to their present habit and mode of management, the zemindars in time to come think of introducing the English system of farming in such bought-up occupancy rights of ryots which comes to him under the pre-emption clauses. Whether this again will be for the good of ryots is a point that has yet to be seen.

As the Bill stands at present, no sooner after his purchase, the zemindar inducts a ryot in such bought-up tenure, such ryot will have a right of occupancy accruing to him in the land.

Statement of the confiscated estates of late Kour Singh in Zillah Shahabad.

1	2				3					4		5
Name of the Mouzahs	The area and average rate, and the jumma assessed by the Deputy Collector, under Section 12, Regulation VII of 1822, found by jummabundi papers.				Proceedings held under Section 5 of Regulation VII of 1822					Proceedings of sale		Remarks
	Classification of land.	Area	Average rate	Jumma	Collection according to the jumma assessed	Deduction of village expenses at the rate of 10 per cent		Deduction of gilandazi expenses and recognition expenses collected at the rate of 10 per cent	Balance showing the Government revenue	Date of sale	Purchase money	
		B C S	R a p	R a p	R a p	R a p		R a p	R a p		R a p	
Gobind Dehri, pergunnah Pero, zillah Shahabad.	Nukdi	66 9 4	2 12 3	193 10 9	560 14 1	80 1 4	72 12 9	108 1 9	62 11 0	7 4 62	7,110 0 0	Government revenue, excluding cesses, is Rs 62-11 only
	Bhowli	314 15 17	1 13 7	555 2 3								
	Parti jadid (new)	35 1 5	0 8 0	17 8 9								
	Garden	7 9 14	1 0 0	7 7 0								
		423 10 1		801 14 1								
Guburoos, pergunnah Pero	Nukdi	76 12 12	3 1 8	237 4 0	1043 4 3	104 5 0	938 15 3	140 13	798 2 0	5 5 63	6,810 0 0	Government revenue including cesses, Rs 810
	Bhowli	37 10 11	2 1 1	77 13 0								
	Parti (old)	87 2 4	0 2 3	7 2 3								
	Garden	27 8 12	1 0 0	27 7 0								
		633 18 19		1049 4 3								
	Lakhraj	8 19 11										
	Gair momkin, uncultivable	93 17 18										
		636 16 8										
Maboosar, pergunnah Pero	Cultivated land	318 9 8	2 0	636 15 0	738 4 8	73 13 3	664 7 5	99 10 8	564 12 9	25 6 61	1,100 0 0	Government revenue, including cesses, Rs 690 only
	Nukdi and Bhowli part, new	12 18 6	0 12 0	95 3 0								
	Parti, old, cultivable	24 13 5	0 4 7	6 2 8								
		47 [illegible] 19		738 4 8								
	Lakhraj	4 18										
		474 19 4										
Khoee Dibro, pergunnah Pero.	Nukdi	450 3 15	1 9 6	717 6 9	951 12 9	95 2 9	856 10 0	128 6 0	728 4 0	7 4 62	7,250 0 0	Government revenue, including cesses, Rs.737.
	Bhowli	250 1 15	0 13 2	209 2 9								
	Old parti	124 17 5	0 2 3	15 3 8								
	Garden	18 16 2	1 0 0	18 13 0								
	Parti, new	1 3 5	1 0 0	1 2 7								
		846 2 4		971 12 9								
	Gair momkin (uncultivable)	45 14 6½										
	Lakhraj	4 0 18½										
		895 17 9										

Name of the Mouzahs	Classification of land	Area	Average rate	Jumma	[illegible]	Deduction [illegible]	Balance	Deduction [illegible]	Balance showing the Government revenue	Date of sale	Purchase money	Remarks
1	2				3					4		5
	The area and average rate and the jumma assessed by the Deputy Collector, under section [illegible] of Regulation VII of 1822 found [illegible]				[illegible] Section [illegible] of Regulation VII of 1822					Proceedings of sale		
		B. C. [illegible]	R a p	R a p	R	R	R a p	R a p	R a p		R a p	
Dha[illegible]a, pergunnah Pero	Nukdi	1 8 [illegible] 11	1 11 [illegible]	1[illegible] 2 [illegible]	[illegible] 13	4[illegible] [illegible]	4[illegible] 2 [illegible]	[illegible]4 2	363 0 [illegible]	20 64	400 0 0	Government revenue, including cesses, Rs 375
	Bhowli	1[illegible] 1 9	1 [illegible]1 0	[illegible]2 13 3								
		[illegible] 1		4[illegible]4 15 [illegible]								
	Parti, new	[illegible] 9	1 [illegible] 0	[illegible]								
	Parti, kadim	[illegible] 4 [illegible]	0 2 0	1 [illegible]								
		3 3 11 1		4[illegible]4 1[illegible]								
	Lakhraj	3 [illegible]										
	Gair momkin	9 2 16										
		[illegible] 14 [illegible]										
[illegible]asmaria, pergunnah Pero	Mateor	3 6 [illegible] 1[illegible]	2 0 [illegible]	6[illegible] 11 0	1 1 0	1 [illegible]	[illegible] 0 0	13 [illegible]	7[illegible] [illegible] 0	[illegible] 62	11 00 0 0	Government revenue including cesses Rs 778
	Dorus	21[illegible] 1 1	1 8 0	3 [illegible] 1 0								
	Jamd parti	3 [illegible] 14	[illegible] 0	[illegible] 0								
	Parti, kadim	1 12 [illegible]	0 4 0	2 11 [illegible]								
		6[illegible] 11 2		1[illegible]1 0 0								
	Jageer goraits	3 [illegible] 1[illegible]										
		6 [illegible] 5 3[illegible]										
Di[illegible]amama, pergunnah Pero	Nukdi	[illegible] 5 1[illegible]	2 3 10	[illegible]49 7 6	6[illegible]5 [illegible]	[illegible] 2	[illegible] 9	120 13 11	6[illegible]4 11 2	2[illegible]4	12 [illegible]00 0 0	Government revenue Rs [illegible] including sarak and dak cesses
	Bhowli	[illegible] 4 2	[illegible]1 4	[illegible] 9 [illegible]								
		443 [illegible] 19		69[illegible] 1 3								
Karma, pergunnah Pero	Nukdi	664 [illegible] 14	1 12 0	1 495 4 3	2 [illegible] 12 [illegible]	2[illegible] 1[illegible]	2 150 12 5	322 9 1[illegible]	1[illegible] [illegible]	[illegible] 3 62	1[illegible],5 0 0 0	Government revenue including cesses Rs 1,826 2
	Bhowli	5[illegible]2 5 11	1 4 0	[illegible] 2 [illegible]3 6								
	Garden	[illegible]0 19 8	2 0 0	14[illegible] 1[illegible] 0								
	Jungle	[illegible] 10	0 4 0	41 2 [illegible]								
	Parti, jadid	10 14 19	0 4 0	2 11 0								
	Parti, kadim, culturable	[illegible] 3 10	0 2 0	5 14 [illegible]								
		1 770 2 2		2 389 12 0								
Umroha, pergunnah Pero	Nukdi	91 8 1[illegible]	[illegible] 3 [illegible]	203 5 3	531 9 [illegible]	3 [illegible]	4[illegible] 7 [illegible]	[illegible]1 12 2	4[illegible]6 1[illegible]			
	Bhowli	307 7 1	1 0 9	322 9 6								
	Parti, old	7 17 9	0 2 0	0 1[illegible] [illegible]								
	Garden	9 9 10	0 8 0	4 11 3								
		41[illegible] 2 1		531 9 9								
	Lakhraj	9 1[illegible] 6										
	Gair momkin	[illegible]9 1[illegible]										
		4[illegible]5 1[illegible] 9										

APPENDIX.

Proceedings of an extraordinary meeting of the Behar Landholders' Association to consider the Bengal Tenancy Bill.

An influential meeting of the landholders of Behar was held at the Sujjubang House of His Highness the Maharajah of Durbhangah at 6 P. M. on the 28th May 1882. There were present:—H. H the Maharajah of Durbhangah, H. H. the Maharajah of Doomraon, H. H. the Maharajah of Hutwa, Syed Lutf Ali Khan, C. I. E., the Agent of Her Highness the Maharani of Tikari, the agent of Babu Run Bahadur Sinha of Tikari, Syed Fuzlul Rahman, Kazi Reza Hossein, Syed Fuzul Imam, Rai Jai Prokash Lal Bahadur, the Hon'ble Hurbunas Sahai, the agent of Rai Mahabir Prashad of Dildargunge, Chupra, the agent of Babu Deo Kumar Sinha, the Dewan of Surajpura Wahid Ali Khan of Durbhangah, Syed Bahadur Ali Khan, Barh, Babu Saligram Sinha, Shahabad, Moulvi Mahomed Hossein, Patna, Shah Mehdi Hossein, Barh, Babus Harpat Naram, Patna, Jagdev Sinha, Patna, Sukhow Lal, Patna, Syed Willayet Hossein *alias* Medhu Newab, Babu Bhuboneshwar Dutta, Maharaj Kuor Narendra Protap Sahi of Hutwa, Babu Sheo Protap Narain Lal, Chupra, Usuf Hossein Khan, Patna, Moulvi Mahomed Ishak, Durbhangah, Babu Govind Narain, Bhagulpore, Moulvi Mazhar Imam, Gya, Munshi Janki Sahai, Patna, Babus Mohesh Narain, Bhagulpore, Badri Narain, Bhagulpore, Hardayal Sinha, Buxar Sub-Division, Babu Ram Sarun Sinha, Patna, Shaikh Rasol Ullah, Mooktear, Zillah Sarun, Babus Deo Kumar Sinha, Sarun, Bishun Sinha, Shahabad, Shaikh Jean (for himself) and for Wali-ul Hossein, Patna and Gya, Moulvi Amir Haidar, Patna, Babus Sooraz Koomar, Patna, Kali Charan Sinha, Patna, Gajadhar Pershad, Patna, Moulvi Athar Hossein, Patna and Gya, Moulvi Zeauddin, Patna and Monghyr, Shaikh, Alahi Baksh, Patna and Gya, Moulvi Hamid Ashref, Patna, Gya and Shahabad, Moulvi Mahomed Taki Khan, Patna, Monghyr, Mozufferpore, and Bhagulpore, Babus Kuldip Shahai, Patna, Sree Kishen Lal, Patna, Nawab Sarfray Hossein, Patna, Peari Saheb, Patna, Hakim Mahomed Amir, Patna, Moulvi Abdul Kadir, Patna, Shaik Fariduddin Ahmed, Patna, Har Shankar Lal, Patna, Syed Geas Uddin Ahmed, Patna and Gya, Moulvi Ahson Saheb, Patna, Giridhar Chaubai, Patna, Rai Iswari Persad, Patna, Babus Jai Narain Bajpai, Patna, Narain Pershad, Patna, Makundi Lal, Patna, Sheve Narain, Patna, Shah Ahmed Nazir, Patna, Shaik Fazal Hossein, Patna, Babus Gouri Shankar, Sarun, Jenggol Pershad, Sarun Shaikh Mazhar Hossein, Patna, Shaikh Hameed, Patna; Syed Zahoor Hossein, Patna, Gya and Tirhut, Syed Badrul Hassan, Patna, Syed Zafar Imam, Patna, Babus Darshun Sinha Patna and Monghyr, Inderdew Narain, Patna and Monghyr, Babus Gopal Sinha, Patna Bhawani Persad, Patna, Mahomed Ismael, Patna, Shaikh Turab Ali, Patna, Shaik Ameer Ali, Patna, Shaikh Janat Hossein, Patna, Shaikh Wahidulhak, Patna, Rai Doorga Pershad Gya and Monghyr (for Rai Sultan Bahadur), Syed Abdul Hossein, Sarun, Syed Nehal Hossein, Patna, Syed Saif Uddin, Patna, Moulvi Abdul Guni, Patna, Shaikh Mahomed Rahim, Patna, Babus Jevan Chundra Mookerji, Poorno Chunder, Pleader, Patna, Moulvi Sham Shul Hoda of Patna, Badsha Nawab, Patna, &c., &c., &c.

His Highness the Maharajah of Durbhangah, in opening the proceedings, said:—

Maharajahs and Gentlemen,—You have been called here to-day for, as you all know, the purpose of considering the Bengal Tenancy Bill, and of expressing the views you hold on its provisions. In opening the proceedings to-day, I do not propose to make a speech, but to hear your views on the subject—views which I shall deem it my pleasing duty to convey to His Excellency the Viceroy in Council. You may rest assured that if you can shew that any provisions of the Bill trenches against the rights guaranteed to you by the permanent settlement, those rights will not be taken away from you. What these rights are it is not for me to say. The question has been dealt with by far abler men than myself, by, in short, the highest legal functionaries in the country—amongst them his Lordship the Chief Justice and the learned Advocate-General. You are probably aware what the views of the Chief Justice are. He thinks that if the Tenancy Bill passes into law, it will, without doubt, trench on our rights; and the learned Advocate-General, who has not published his opinion, holds, as I learnt from a conversation I had with him, as also from other sources, precisely the same views. These, gentlemen, are the independent views of the two highest legal functionaries of the country. Of course, there are people who try to make out that the provisions of the Tenancy Bill do not trench on the vested rights of zemindars; but, after reading and hearing the views of the gentlemen I have named, I must confess that I believe that the provisions of the Bill *do trench* on our vested rights. I will admit that on such an intricate subject as this, I am not competent to pass a judgment as I am not a lawyer myself, but the Government have the views of two of their very highest legal officers on the subject, and I think every one will admit that they, at least, are competent to pass an opinion. I may state that on this subject Lord Cornwallis held that the property in this soil was vested in the zemindars who were entitled to enjoy the fruits of their own management: and again it was stated in the Regulations of 1793 that the Government revenue being fixed, the zemindar was to enjoy for ever the difference between the value of the State share of the produce of every bigah of land now in cultivation or hereafter to come into cultivation, and this fixed money revenue. Furthermore, it was laid down that the zemindar was to let out the land of his estate with certain restrictions to whomever he pleased and in whatever manner he pleased. These, then, were, and are, your rights; and it is for you to say whether or not the value of your property will be deteriorated by the passing of the new Act. Older men than myself, with far greater experience than any to which I can lay claim, will be

able to give a weightier expression of opinion on the subject than I can. I can only say that if freedom of contract is done away with, the value of landed property must decline. You know that a special section of the proposed Bill debars the ryot from contracting against his rights of occupancy. Such contracts as you know are seldom made. But there are occasions when it is necessary that such contracts should be made. A piece of land may be situate at or about the dwelling-house of a zemindar, and though he may not have occasion for its immediate use, he may require it hereafter. He lets it out—but lets it out on condition that no right of occupancy shall accrue therein It is chiefly in such cases where contracts are made, and is the zemindar to be prevented for ever from using his land? Then the ryot may wish to enter into a special contract, and is he not to be in a position to do so? What I mean to say is, that a ryot understands his own interests a great deal better than anybody else, and it is useless for the legislature to think that it can protect his interests better than the ryot can himself. My own opinion is that the Government, in proposing to legislate after this fashion, seems to think that the ryot is a child, and the zemindar a monster. Then again, the primary object with which a change in the law of landlord and tenant was contemplated was to give to the zemindars further facilities for the collection and enhancement of rents: in fact Sir Richard Temple first drafted a Bill on these lines; and if such a Bill had been passed it would have been much better indeed, though I may state that we, Beharis, never asked for such a Bill. The provisions of the present Bill, however, seem rather to go to the other way. The most speedy and best way of realising rent is in the power of distraint, and this power is now to be taken away from us. Some authorities contend that the power of distraint is an off-shoot of the English law, and it should therefore be abolished. Well, I admit that the members of the Rent Commission have given more time to this subject than any of us have; but there is one little fact which they have not explained, and which completely upsets their theory. You are probably well aware that some of the southern districts of Nepal are adjacent to the districts of Northern Behar; and if any one really wishes to find out what was the custom of the country previous to the Permanent Settlement he ought to go to Nepal, where he would discover a system of distraint which has been in force for hundreds of years—in fact from time immemorial. This little fact clearly proves to my mind that the theory of the Rent Commission—that the power of distraint is an off-shoot of the English law—is not the true theory. But they also seem to think that the power of distraint has only been introduced since the time of the permanent settlement, and therefore that there are sufficient grounds for abolishing it. In fact they proposed to abolish it altogether, and in this view the Government have effected a compromise, but I am confident that the proposed mode of distraint which is now only had recourse to as a speedy mode of realising rent, by making an initiative proceeding in a distant court necessary, will only frustrate the object in view. Then, again, the Commission and the Government are very desirous to put down oppression which, they say, is practised by the zemindars, and to restore the old custom of the country. But one of the greatest oppressions committed—and this, mind you, is a legal oppression—is the heavy taxes which we have to pay for justice. They have proposed to do away with the power of distraint and to appoint managers in ijmali estates, but no provisions have, I see, been made to do away with court-fee stamps, or to reduce their value (hear, hear and cheers). When they desire to do away with distraint they speak of the old customs of the country, but they are silent as to the customs of the country on the subject of court-fee stamps. As far as Oriental natives are concerned, the imposition of a tax on justice is viewed with feelings of repugnance, for they think that it is the duty of the Government to mete out justice. But as people get civilised their ideas change, and it may therefore be that there is not such a repugnance to a tax on justice among a more educated community. However, the fact remains that the tax on justice is a heavy one, and if that, at least, was done away with or reduced, the Government might be credited with the intention of giving us some cheap mode of realising our dues, and at the same time, reverting to our ancient Hindoo mode of doing the duty of a king As it stands, however, while the process for realisation of rent has been lengthened, nothing whatever has been done towards lessening the expenses. It is therefore that I say that the Government has in this matter of the rent law gone decidedly against the intention of Sir Richard Temple, whose object was to give facilities for the collection of rent. While, therefore, the power of distraint has been removed, nothing has been done to diminish the costs. As far as the enhancement of rent is concerned, I think the provisions of the Tenancy Bill are most monstrous. The Bill proposes fixing a table of rates for each pergunnah. Pergunnah rates, as you know, vary in each village. I have known many pergunnahs where the rates are Rs. 5 per bigha in one village; while the rates for similar lands in another village are only eight annas per bigha. Therefore I think that instead of fixing a table of rates for each pergunnah, the Bill ought to fix a certain proportion of the gross produce as the zemindar's rent. But the Government proposes to fix the maximum at one-fifth of the gross produce; whereas, as a matter of fact, in some parts of the country the prevalent customary share of the zemindar in *bhaoli* tenure is not less than half at the present date, and the State share of the produce, which was transferred to the zemindars in 1793, was never less than half. It is in fact proposed to introduce land courts similar to Irish land courts only in a different name. These are the only two points, gentlemen, on which I intend to say anything just now. I would like to have spoken more, but then I alone would be monopolising all your time and attention. The primary object, you will please to remember, was to give to the zemindars further facilities for the

realisation and enhancement of rent, and I hope I have shown to you, to the best of my abilities, that the proposed Bill will actually give us no such facilities; but, on the contrary, if it unhappily passes into law, it will have the effect of narrowing our powers to a great extent in securing even our undisputed dues. The other sections of the Bill refer to tenants in particular. I would like to have discussed the subject more fully, but as I am confident that it will be treated by other members who are older than myself and who possess a great deal more experience than myself in by far an abler manner, I shall not trouble you any longer with what I have to say. (Loud cheers.)

In moving the first resolution His Highness the Maharajah of Hutwa said :—"Gentlemen, you have been called here to-day to consider the Bengal Tenancy Bill. As you are aware, under that title a Bill to consolidate and amend the present law of landlord and tenant was presented to the Council of the Government of India by the Law Member on the 5th March, and, discussion having taken place on it on a subsequent sitting of the Council, the Bill has been referred to a Select Committee, which will meet after the Council meets again in Calcutta in November next. In the meantime the public have been invited to place before Government an expression of their opinion on the Bill, and the Bengal Government circular asks us to give our opinion by the 15th June at the latest. The Government translation of the Bill is only just out, but the Behar Landholders' Association have thought it their duty under the circumstances to publish ere long a vernacular synopsis embodying the most important changes proposed to be made by the Bill. That synopsis is now in your hands. You will be able to judge therefrom what momentous changes are going to be effected in your right by the proposed Bill. Gentlemen, it is said that all these changes are absolutely necessary, because here in Behar we are rack-renters and oppressors of our ryots Now that is a charge which you have to answer. The charge implies one of these three things: *1st*, that the law does not afford sufficient protection to the ryots; *2nd*, that the administrative machinery is weak and powerless to enforce the laws; *3rd*, that the people, the subject of oppression, are ignorant of their rights or powerless to assert them. Now the first two of these suppositions cannot be correct, because the same law which admittedly makes the ryots of Bengal the masters of their landlords, prevails in this province, and the administrative machinery which affords them protection and redress against wrongs in Bengal is ready to afford them protection and redress in Behar as well. There remains the last of these suppositions, and the question is whether it is a fact that our ryots are ignorant of their rights and powerless to assert them. Now, gentlemen, agriculture in this province is not, as you are aware, confined, as in Bengal, amongst the lower orders of Mahomedans and Hindoos. We have here amongst our ryots the veritable cultivators of the soil, Brahmins, Rajputs, Babhons, Kyasts, Coirs, Kurmis, Gowalas, in fact all castes of Hindoos represented; and we have also a class of Mahomedan ryots, not so low and despised as the Mussalman ryots of Bengal. Now, are these people ignorant and powerless to defend themselves? They are certainly not more ignorant than the landlords to whom they pay rent. Gentlemen, we have heard ever and anon stories of the depressed condition of the Behar peasantry. There is no question that sometimes the pressure of population, the excessive sub-division of lands, proprietory and ryoti, which is the consequence of our law of inheritance—nay their extravagance in foolish displays on occasions of marriages and so forth, the luxury of litigation which they have come to indulge in with all the administrative conveniences at their very door, are telling hardly against our people in general; but I doubt whether it is a fact that our agricultural people are worse off than the same class of people in lower Bengal. Whether money rent is higher or lower here than in Bengal is a question to which I do not enter at present, but granting that the money rent is higher, is it not a fact that while our peasants here make two and sometimes three harvests out of their holdings, in Bengal they get only one? Have we not in our midst numerous instances in which from the position of a mere cultivator, our Koiris, our Kurmis, our Gowalas have risen to be thikadars and ultimately the zemindars of their mouzahs? How many instances of this kind can Bengal show? Before they vilify us, let our vilifiers at least make enquiries into these points. Let them satisfy also as to whether it was not a fact that here in Behar, at the date of the permanent settlement, the rate at which assessment was made was or was not something like three-fourths of the produce in kind of every bigha of land, and whether these rates have not been reduced by the zemindars themselves in the interest of their ryots. Let them satisfy also whether it is or it is not a fact that the rate which the zemindars now receive from the ryots is much lower than the rate which they are entitled to demand as the pergunnah rate. Now if other facts were wanting, would not these facts at once show that the Behar zemindars are not the tyrants, the harpies, and the rack-renters they are represented to be? Does this not show that in the face of a growing population and an increasing demand for land, the Behar zemindars have not been wanting in their good will towards the ryots? Gentlemen, it was only year before last that Sir Ashley Eden, in replying to a deputation of the Behar Landholders' Association, said: "I can assure you that nothing has given me greater pleasure than to notice, as I have had ample opportunities of doing, the extraordinary improvement in the condition of the people. It is made manifest in a hundred ways daily, even to the most casual observer. I hear the same story from all classes, official and non-official, and it is a matter for general congratulation.

"This improvement is due to various causes—first and foremost, to several succeeding harvests, plentiful almost beyond the recollection of the present generation, and these full harvests followed years of trial and famine. Next there has been, with growing prosperity,

and an increase in the value of land, a *general awaking* of the cultivating classes, and an improved knowledge of their legal rights and privileges, and this has, I hope, been accompanied by a stricter administration of the law. Then there has been a greater readiness on the part of landlords to recognize and affirm the rights of cultivators, and I hope that this may to some extent be due to the influence of your association." Does this testimony, coming from such a high quarter, show that our ryots are yet ignorant, and that our zemindars are unwilling to recognize their rights? If this is not so, and even if this were so, where would be the justification of the violent changes about to be introduced—changes which would sweep away half our rights! Gentlemen, you have heard of the fable of Jupiter and the little frogs. The little frogs expressed themselves dissatisfied with their king-log, and asked Jupiter to send them one better, and Jupiter sent them the king-stork. Our fate is much the same. If not we, our brethren of Bengal, complained that Act of 1859 did not afford them sufficient facilities for realizing their rents, and they have gone on complaining till we and they have been all alarmed by the Bengal Tenancy Bill. The development of the Bill in its present form illustrates the fable in a very marked manner. The Behar Rent Commission assembled at Sonepore in 1879, but before they could submit their report, a short Bill was introduced in the Bengal Council by Mr. Mackenzie This dwarf Bill had only two objects: to make occupancy rights transferable, and to make a short procedure for the realization of rents It also, by the way, defined occupancy rights so as to make it to some extent more restricted than it was under Act X of 1859. This was was thought a sufficient *penacea* for the ryots' bills. Well, we protested, as we thought it our duty to protest, both in the interest of the landholders and tenants. The Bill was referred to a Select Committee, and on the recommendation of this Select Committee, instead of taking up the rent law piecemeal, it was resolved to face the whole question once for all. This was the origin of the Rent Commission. In the meantime, the recommendations of the Behar Rent Commission were submitted to Government, and the Rent Commission having been appointed, the whole question of rent law together with the recommendations of the Behar Rent Commission, was referred to that body. The Rent Commission drafted a Bill, the provisions again trenched on our rights, and it trenched against some of the rights of the ryots also, the Rent Commission, according to their report, having offered them by way of compensation to the zemindars. Now we memorialized again against these provisions. Without adopting the Bill of the Rent Commission in its entirety, the Bengal Government commissioned Mr. Reynolds to draft a Bill, and ultimately it sent up a Bill of its own to Government of India, and this Bill, notwithstanding a pledge given by the Government of Bengal in a letter to the British Indian Association that it was to be published for the information of those *interested*, was never published. The Government of India, having consulted Her Majesty's Government, have determined on the main features and general principles of the Bill, and the result is the Tenancy Bill before you. Now, gentlemen, if you would simply compare the provisions of these various Bills, as regards the three main questions of fair rent, fixity of tenure, and freedom of sale, you will find a perfect illustration of the fable I have quoted above; you will find how the dwarf has developed itself into the monster which threatens your existence. Mr. Mackenzie's first Bill did not touch on the question of fair rent at all, nor was it alleged at the time that in the interests of the ryots that question was at all necessary to be touched; it did certainly restrict occupancy rights to a greater extent than before, and it prescribed a summary procedure for realization of rent which, if not exactly summary, would have compensated the unscrupulous amongst the zemindars for many a loss of his rights. In return it granted a free transferability to occupancy rights. This was its salient point. The Behar Rent Commission report, which had been put forward as an excuse for some of these violent changes, did not recommend any change at all with respect to the three main questions alluded to above. The Rent Commission certainly recommended many changes, but as regards occupancy rights, the Bill left the law as it is; only its numerous explanations and illustrations would have made the right more difficult of acquisition. It restricted ryoti rights to actual cultivation. It fettered transferability by providing against mortgages, and it limited fair rent to a fourth of the estimated average annual produce of land in staple-crops. Only it attempted to create a new class of ryots with three years' occupancy to whom it gave certain rights. Now the Tenancy Bill deals with these questions in a more summary way. It gives occupancy rights to all *settled* ryots, with respect to all ryoti lands they may come in possession of irrespective of the time of occupation; it makes transferability unrestricted, except that it gives the landlord a right of pre-emption—a right which he would never choose to exercise if he were wise, and it limits fair rent to a fifth of the estimated average annual produce of land in staple-crops in cases of occupancy rights; while as regards ordinary ryots, the tendency of the provision will be to give occupancy rights to a ryot no sooner he will get into possession of a piece of land. The doctrine "once a tenant always a tenant" will have meaning of its own under the Bengal Tenancy Bill.

Now, gentlemen, instead of troubling you with the details of all the changes made under the Bill, I will confine myself to the most important ones I have indicated above. I will show you how all these changes tell against the rights vested in us by the permanent settlement. Take for instance the question of fair rent and its limitation to a maximum of a fifth of the estimated annual produce of land in staple crops as regards occupancy ryots, to five-sixteenths in cases of ordinary ryots, and to half in cases of *bhaoli* tenures.

These limitations touch the very principle on which the permanent settlement is based. That settlement as you all know, though dictated by the kindliest of policy towards a subject

race, was in the nature of a contract, under which Government, for the consideration of a fixed money rent or revenue, parted with its rights with respect to a share of the produce to every bigah of land in favour of the zemindars. It was something like a perpetual lease under which the Government for all times to come leased out its share of the produce of land to zemindars for a permanent rent or revenue, which the latter agreed to discharge for all time to come without making any application or claim for remission on ground of drought, inundation or famines. Now, gentlemen, in India the produce of the land had been at all times divided between the State, the zemindar, and the actual cultivator. The zemindar under the permanent settlement is now entitled to the first two shares, and any limitation which would be determined without due regard or enquiry as to what was this share or shares would go certainly against the principles of the permanent settlement. The zemindar does not certainly like to touch the share of the ryots. The rights of ryots could not be and were not indeed touched by the permanent settlement, because they were no parties to that settlement; but the zemindars are certainly entitled to ask to be protected in their rights (*i.e.*) to their own share of the produce and the State share which was transferred to them in 1793. What was then the State share of the produce at or about 1793, is the question. It is a question which, notwithstanding its importance, has been left undetermined during the present discussions. But, as it appears to me, it has been fully determined ere long. In 1812, a parliamentary committee sat on the affairs of India, and in one of their reports called the fifth report they make the following statement :—

"In the extensive plains of India a large proportion, estimated in the Company's provinces, at one-third by Lord Cornwallis, at one-half by others, and by some at two-thirds, of lands capable of cultivation lies waste and probably was never otherwise. It became, therefore, of importance to Native Governments, whose principal financial resource was the land revenue, to provide that as the population and cultivation should increase, the State might derive its proportion of advantages resulting from their progressive augmentation. * * * This rule is traceable as a general principle through every part of the empire which has yet come under the British dominion, and undoubtedly had its origin in times anterior to the entry of the Mahomedans in India. By this rule, the produce of the land, whether taken in kind or estimated in money, was understood to be shared in distinct proportions between the cultivators and Government. This share varied when the land was recently cleared and required extraordinary labour; but when it was fully settled and productive, the cultivator had about two-fifths, and Government the remainder" During the early days of the Hindoos, the State share was certainly smaller. We find from Manu that the King's share was from one-twelfth to one-sixth. But even, during the last days of the Hindoos, the share had come up to a fourth. Akbar fixed it at a third, but there is evidence to show that even during his reign, the share actually taken was half. It had certainly come up to a higher proportion during the days of Aurangzebe and the last days of the Mahomedans, and when the British Government obtained the Dewany, and on the date of the permanent settlement, this share, on which the public assessments were made, had not been certainly reduced.

Now this was the share on which the permanent settlement was based. The share was not only due with respect to lands actually in cultivation, but became due, as we find from the quotation given above, no sooner a bigah of land came into cultivation. Three questions will perhaps be asked. *1st*, it will be said that though theoretically the State share was three-fifths, the money assessment was lower. True it is that Akbar commuted his one-third into a money rubbeh; but many abwabs had been added up to his rubbeh and at the date of the permanent settlement, there is good evidence to shew that money assessment wherever, as in Behar, not actually based on an actual proportion of the produce, was based on a money rent that bore a higher proportion to the gross produce than the rubbeh of Akbar; *secondly*, it will be said that though the zemindars were actually entitled to the State share of the produce *plus* their own share, that is to pergunnah rate of rent, in practice they never keep up to this high figure in the pergunnah There can be no question that the so-called pergunnah rate, at which the assessment was fixed, pressed very heavily on the ryots then, and the only way the zemindars could relieve them of this high pressure, and at the same time keep their estates from sale, notwithstanding the high amount of revenue which they had to pay, was by doing their best to develope the resources of their estate (*i.e.*) by actually bringing waste lands into cultivation. Many could not do this, and their estates were brought to sale. Well, gentlemen, the permanent settlement was not an immediate boon to the zemindars with whom the settlement was made. Many of these could not discharge the high amount of revenue which had been assessed on their estates, and as a great historian of India says—"The selling of the zemindaris immediately began and proceeded with a rapid pace. In the year 1796, the land advertized for sale comprehended a rent roll of 287,000 sicca rupees, which, according to the total assessment, was nearly one-tenth of the whole of Bengal, Behar and Orissa in a single year. By the progress of this operation the whole class of the ancient zemindaris, instead of being erected into an aristocracy, was speedily destroyed;" *thirdly*, it will be said that this limitation does not touch existing rates, that the zemindars will not be disturbed in the enjoyment of his present rent, and that it only stops enhancement where the rates are already exorbitantly high. Well, gentlemen, it is not absolutely true that the limitation will not touch existing rates.

In *bhaoli*, a rate of 9 annas share of the produce out of the 16 annas is not uncommon now in Behar. In this case, immediately on the passing of the Act, the rate will be

reduced to 8 annas, and a zemindari, the present income of which is Rs. 9,000 under *bhoali* tenures, will not have its income reduced to Rs. 8,000. Then again, as I have already told you, the limitation touches the very principle on which the permanent settlement was founded. That settlement was not made for a day or for one hundred years. It would be as much an infringement of that settlement contract if the zemindars or their successors are hereafter to be debarred from the rights which were given to them in 1793.

Take then the question of fixity of tenure and freedom of sale. At the date of the permanent settlement, lands were under the occupation of the zemindars as his *nij jote*, in the occupation of middlemen, or in those of actual cultivators, khudkast and others. A great part of the land was, however, waste. *Nij jote* lands, here in Behar malikana lands, which the zemindars had previously held whether they entered into settlement or not, were amalgamated with the malguzari lands under the permanent settlement. There cannot be any question that at least with respect to these lands the zemindars had full proprietory right, and could do with it just as they pleased; historically it can be proved that this bit of land descended to a *Gram Adhikari* (zemindar) from the time of Manu. It is now proposed to fetter the zemindar's power with respect to this class of land also. They will be only nominally his, if he had been imprudent enough to settle it with a ryot, and the ryot had been in possession for 12 years. The next class of lands, those in the occupation of middlemen, does not much concern us here, as sub-infeudation in the province has been till now very rare.

As to the lands in the occupation of ryots, *khudkast*, or otherwise, the limitations fixed were that the pattahs of *khudkast* ryots were not to be cancelled, unless they paid less than the pergunnah rates, and for some reason or other which does not concern our present purpose, this provision was not made applicable to Behar. It was also stipulated that the existing lease of other ryots were not cancelled during the term for which such pattahs had been granted. With these reservations the zemindar was given the full power of letting out the lands to whomsoever he pleased and in whatever manner he pleased. This was in 1793. We are told now in 1883 that we must not do whatever we pleased with the lands which we have brought into cultivation at a very heavy expense to ourselves. Then that not only every squatter is to get occupancy rights with respect to these lands at a rent nor exceeding a fifth of the estimated annual value of the produce, but that he will have a transferable right too. Now, gentlemen, whatever might have been the rights of the *khudkast* ryots of old, a class of ryots entirely forgotten by the provisions of the Bill, no one pretends to say that they had a saleable right at the date of the permanent settlement. I leave others to tell you how these provisions of fixity of tenure and freedom of sale are calculated to disturb the existing rural and agricultural system in these provinces; how if these provisions were to stand just as they are in the Bill without any let or hinderance to the power of subletting of occupancy ryots, while you, gentlemen, all will be reduced to a three-anna zemindar, a new kind of 13-anna zemindari will spring up, the creation of the Tenancy Act, with men as proprietors who will be nominally known as ryots.

Gentlemen, I have been so long in shewing you how the provisions are calculated to trench on our rights as vested in us by the permanent settlement. The reservations of power in the hands of Government to enact laws for the protection and welfare of ryots do not mean that vested rights should be taken away to be given to others. Gentlemen, the permanent settlement is the "Magna Charta" of our rights as also of the rights of our ryots; far be it from our thought to usurp the rights of our ryots, far be it from our thought to raise obstacles in the way of Government enacting law for their protection and welfare, far be it from our thought to object to the benevolent intention of Government to ameliorate their condition. I am sure you will all co operate in a body to improve the condition of your countrymen. The charge of apathy, of want of public spirit, can be fortunately no longer brought home to your doors; but I am sure, as you will do justice, you will expect justice to be done to you in return. No gentlemen, I am sure, under Her Majesty's benign Government, which is established on the solid rock of justice, in which the rights of even the meanest are protected, your rights will not be taken away if you will only loyally, firmly and constitutionally represent your case to Her Majesty's noble representative in India. The Government of our Excellent Viceroy Lord Ripon, which has already done so much for our people, cannot do a conscious injustice to that important class to which you belong, and if you can only show that the changes contemplated by the proposed Tenancy Bill trench against our rights as guaranteed to us by the permanent settlement, you can rest assured that you will get full justice done to these rights.

His Highness the Maharaja of Doomraon seconded the motion. He said that he agreed with all that has just fallen from His Highness the Maharajah of Hutwa, that he has said in full what he had to say on this question, at the meeting of the zemindars at Shahabad, and he does not like to detain you with another speech here.

The Hon'ble Hurbans Sahai, in supporting the Resolution, said that the substance of the Resolution was that certain rights had been guaranteed to the zemindars by the permanent settlement, which rights, it was understood, could not be taken away. The reservation of power for protection and welfare of the ryots did not mean that the rights of the zemindars should be taken away to be given to the ryots. It was asserted that the zemindars were in the habit of rack-renting and oppressing the ryots. If the meeting bore with him, he would show them how the Government protected its ryots. He held in his hands authenticated copies of certain pottahs given to ryots in khas mehals, and he would read to them some of the

conditions of those pottas.—"Whereas in accordance with the order dated 29th July 1879, 25 bighas of land numbered below, situate in mehal Diora Khowaspur, pergunnah Arrah, property of the Government, were let out with us at the rate of Rs. 6 per bigha, the annual jumma of which being Rs. 150 exclusive of cesses for one year. Therefore we write the kabuliut that we may cultivate the land and appropriate its produce, that we may pay the rent of the land to the Government *kist* by *kist* and year by year, that in case of default and if we do not deposit the Government rent in the treasury within the time allowed, and if any part of the rent is not paid by us, the Government servants have power to eject us from the land without having any assistance of the civil courts, and will not wait for completion and expiration of the year; and they have also power to realize the rents with interest thereon at the rate of 12 annas per cent. calculated from the date when it became due by sale of our moveable and immoveable property whatever could be found without procuring any assistance of the civil courts, and we ourselves, our heirs and representatives cannot have any objection to those proceedings; and if they have any, that will be disallowed and rejected. If any damage is done to the land by our fault we will be held responsible for it and we will, without any objection of dryness of season, or the produce of land being watered and washed away or any unexpected damage to the crops, pay the rent assessed; and if we put forward such objection that will be rejected, and that if we die within the time of settlement mentioned in this kabuliut, the Government servants are at liberty to settle this land with any other they like, or they may settle it with our heirs till the period of settlement expires. If any order of the Collector be passed, we will not anyhow disobey the order, or if we do so by negligence or idleness on our part, we shall be liable to any penalty and punishment given under the provisions of the law in force. If after the term of settlement expires, the Government has power to allow the present settlement to remain, or to annul this settlement and let out the land with any other person whom they may think fit; and in this new settlement neither we nor our heirs have or will have any objection; and if they have any, it is not allowable. And we are not anyhow authorised under the terms of this kabuliut to transfer the interest in land without the permission of the Government servant or give any pottah (lease) to any other person, or make any other person partner; and if we do anything inconsistent with the terms mentioned in the kabuliut, the servants of the Government are at liberty to make the kabuliut void without any assistance of the court. And if the Government has any necessity of taking the land, we will without any objection relinquish it. And be it known we will never acquire our gozushta right in this land; and without any order we will not plant any trees or bamboos in the land, and therefore we have written this kabuliut that it may work at any time of necessity."

The Hon'ble gentleman then commented on the provisions of the Bill, section by section, as follows:—The condition of the Government khas mehal ryot is worse than that of his brother in a private zemindary. The Bill, in the first instance, should have been applicable in his case, as the rate of rent in khas mehals is fixed according to the whims and fancies of the settlement officers, and sanctioned by the higher revenue authorities. The tenant incurs the expense of coming into court as plaintiff against the Government; while the Government enjoys the privilege of recovering rents summarily. Is not the position of the most oppressed ryots of a private landlord enviable in comparison with that of the most happy of the khas mehals? Those who know to what an alarming extent enhancement of rent has taken place in khas mehals, and to what dreadful oppressions and hardships the ryots there are subject, will not hesitate to answer in the affirmative. Should it not, therefore, be made in keeping with the generous and liberal profession of the Government to give as much protection to the ryots of its own estates as to those of private zemindaries? Indeed, the anxious solicitude for the welfare of the dumb and oppressed millions comes with a very bad grace from the Government, when it does not hesitate to treat our own ryots so ungenerously and illiberally as is generally done in khas mehals.

The ryots, partly on the false belief that there is no remedy against the officers of the Government, simply submit to their lot without the least murmur of complaint. Let the Government, therefore, if it really wishes to improve the condition and status of the ryots, extend the boon to its own tenants. Let it itself set a noble and pious example to the oppressive zemindars that they may be ashamed of their inhuman and unpatriotic conduct, and may follow after the footsteps of the Government. The Government as a zemindar has been so long setting a bad example to other landlords, that it is high time that it should now find its own mistake and correct accordingly. The provision of the Bill does not affect the powers of the settlement officers, the reason being that it will not interfere with their powers of fixing the rates at the time of settlement in temporarily settled estates. Do not the ryots of such estates deserve as much protection as the ryots of the permanently settled estates? The zemindar is a much-abused creature; vials of wrath have been poured upon his head. Much has been said about his oppression, greediness, and unmitigated selfishness. In short, he has been represented as a vulture intent only on falling upon his prey, the ryot, and the Government has offered itself as his protector. But such conduct on its own part does not seem to be in keeping with its own profession. The second chapter of the Bill deals with the khamar and ryoti lands. It provides that the existing stock of khamar lands cannot be hereafter increased, and further that all land shall be deemed as ryoti land. Why should such a presumption be made in favour of the land being ryoti? Hitherto the practice of the court and the custom of the country has been just the reverse. If a ryot claim against the zemindar or a landlord as a ryoti, the onus of proof lies upon him. It may be that in a village there has been no custom established before the commencement of the Act with regard to the recognition of zerait land. Why should not a zemindar treat such land as zerait?

Section 6.—Now in some villages there are waste lands and land unreclaimed and lands under water. These lands ought to be comprised within khamar lands: lands from which no rents have been realised cannot be called ryoti lands. It has not been correctly represented that the zemindars of Behar always make persistent efforts to increase the extent of khamar or, as it is termed, their zerait land, whereas it is true only in the cases of their lessees or some small landowners.

Section 9.—What is the Collector to do in a village where there is no custom established before the commencement of this Act for recognition as zerait, where the Collector finds that some lands have been newly purchased by the zemindars, or some lands have been relinquished by the ryot, and is in the possession of the zemindar? This section makes it a matter of necessity to amend the definition of *khamar* land.

Section 10.—One month's time of appeal will not be sufficient for big zemindars.

Section 13.—Why should not a zemindar be allowed to acquire ryoti land after the approval of a register of *khamar* land by the local Government? For instance the register has been approved of by the Government in the month of May 1883, and a ryot holding a certain jote relinquishes his jote, or a zemindar reclaims certain waste land in the month of June following. Why should not lands of this description be recognized as *khamar*? Thus it will be necessary for the Government to revise the register annually.

CHAPTER III.

Section 15.—The presumption that the land, the rent of which has not been changed for 20 years, will be considered that it has been held at that rent from the time of the permanent settlement, is very objectionable.

It may be modified, and at least "twenty years from the time of Act VIII of 1869" should be substituted for it, otherwise it will prove very hard to the zemindars.

Section 20.—The ryots of the estate not permanently settled deserve as much protection as those of the permanently settled estates. The Government has saved to the settlement officer a right to raise the rent, simply because it will affect its own revenue.

Section 22.—The provision that the rent of the tenure-holder cannot be enhanced under Section 21 to more than double the rent previously payable is objectionable, for the fair and equitable rent may in some cases be more than double the amount previously payable.

Section 23.—The restrictions as to the progressive enhancement to rent is altogether unnecessary. If the enhancement be considered just and equitable, why should it not be introduced at once?

Section 47.—The principle of section 47 cannot be defended. According to the present law, a ryot who has cultivated different lands in a village has no right of occupancy in the land so held by him. The zemindars consider that they can oust him at any time; but should it be declared that his ryot has right of occupancy in all the lands held by him on the second March 1883, they will be taken by surprise.

Section 49.—The section should be modified as follows: "unless he has held on lease for a term, or year by year."

Sections 50-56.—The Bill does not at all benefit the actual cultivators of the soil. The middle class cultivators who will be profited by it, are not after all the actual cultivators of the soil. The provision of giving the right of sub-letting the land will not at all do any good to the actual cultivator, who under its provision will not be allowed the rights of occupancy. This is certainly anomalous and its inevitable effect will be to put the actual cultivators at the mercy of grasping middle-class tenure-holders. The actual cultivators will not feel any permanent interest in the land, and they are therefore not likely to increase the value thereof. It will unnecessarily multiply subordinate tenures which will prove prejudicial to the interest of agriculture. The Bill interferes with the freedom of contract. It provides very unjustly for a right of occupancy against any contract to the contrary. It will defeat the very object of the Bill—the interest of the ryot. The ryot may of his own accord give up his legal right in order to secure some personal benefit, but in case the provisions of the Bill are carried out, no chance of benefiting himself will be left to him. It will also be remembered that the ryots have now-a-days to deal with large landowners who are more lenient than the class of middle-class tenants, who are now going to be created by the provisions of the Bill.

Section 51.—As regards the right of pre-emption, though it is true that the zemindars have been allowed this privilege, still they are not allowed to buy on the same conditions as the ryots. The ryot does not lose his right of occupancy by leasing it to any other person, if he does not wish to cultivate himself, but no such provision has been made in the case of the zemindar. He has not been allowed even the right of an ordinary purchaser; all this injustice is going to be done to him simply because he has the misfortune of being the owner of the land. What can be a better proof of the one-sided character of the Bill than this? The tenants will be raised, to all intents and purposes, to the commanding position of proprietor, while the real proprietor will be reduced to an accountant.

The right of pre-emption will not serve the purpose of checking objectionable transfers. A neighbouring rich and powerful zemindar would find no difficulty whatever to collude with the tenants of another weak neighbour, and to instigate them to sell their tenures simultaneously and *en masse*. Having not sufficient money at his command, his land would pass into the hands of the unfriendly zamindar, who would harass his weak neighbour by stopping payment. It is clear that by the powers of transferring and subletting which the Bill recognizes, the great bulk of the actual cultivators would not be occupancy

tenants. The law does not afford any protection whatever to them; so from a ryot and zemindar's view both the provisions are very objectionable. It does not benefit the ryots and at the same time does not guard against objectionable transfers. The zamindar will find it difficult to cultivate the land himself, and thus will be obliged to lease the land, and will gain no advantage. The moment a zamindar who purchases an occupancy right in his own land lets that land to another ryot, he loses his occupancy right. Can there be anything more unjust than this? He will have to pay a large sum of purchase-money, but he will not be allowed to enjoy the benefit thereof. Nothing can be more objectionable than such arbitrary legislation. As regards the ryots' powers of transferring and subletting, the Government proposes to make in future provision for complications that may arise thereof; but it is better not to create complications than first to create and correct them afterwards.

CHAPTER VI.

Deals with the subject of rents payable by occupancy ryots. Under the provisions of this chapter, the ryot has not been allowed to act as a free agent. It will interfere obnoxiously with the freedom of the parties, and it will prove much prejudicial to the interests of the ryot himself.

Section 59.—The ryot himself is the best judge of his own interests. The approval of any written contract by the revenue officer is wholly unnecessary.

Section 61.—Moreover, the revenue officer has been virtually debarred from registering any contract by which a ryot engages to pay a rent more than one-fifth of the estimated annual value of the gross produce of the land. Even from a ryot's point of view it is very objectionable, as it will inflict much hardship in many cases, inasmuch as the ryot will not be able to gain any personal advantage by giving up his legal right. So it will be seen that liabilities of the zemindars nearly amount to seven-sixteenths, but he will get only one-fifth. So he will be a loser by seventeen-eighteenths of the gross produce of the land. The sections for enhancement cannot be worked properly, and they will become dead-letters, and it will become worse than the present provision for enhancement of rent. The only result will be that the zamindars and the ryots will have to pay from their own pocket the necessary expenses for investigation, &c., and there will be frequent disputes about the correctness of the classification of lands, which will be a fruitful source of endless and ruinous litigation.

Sections 76 to 79.—The provisions as to enhancement not beyond double rent previously payable, as to powers to order progressive enhancement are very objectionable, as already noticed. The Bill lays down a uniform proportion with respect to the rates of rent in all the districts, but it ought to be remembered that the facilities for cultivation, the capital and labour employed, are not the same with respect to all lands in all districts.

[*The remarks relating to sections 81 to 118 will be found on pages 177 to 180 of the appendix.*]

It has to be noted that some years will be some fifty years hence; they will require all that help which the State can give them if they by that time do not learn how to help themselves. Are they rack-renting and are the ryots rack-rented? The Beharees are indeed poor, but I deny that the system of tenure which prevails in the province, the sort of relation which subsists between the zamindars and the tenants in this province, make them poor. The great populousness of the Behar districts and the consequent low rate of wages serve to make the great landless classes poor. To these causes you have to add their want of thrifty habits; but are the agricultural classes poorer than the corresponding class even in Lower Bengal? This is to be seriously apprehended that a great national calamity will ensue, if agriculture continue to be our only national pursuit. Already there is a great sub-division of lands among the proprietory body, and the transfers of ryoti rights and their heritable nature will make agricultural holdings smaller and smaller year by year. Government should therefore, when it would further the interests of the poor, instead of proceeding on a false assumption that the zamindari system is the cause of the poverty of our ryot, try to find out the real cause, and apply the true remedy. The population of neither Behar nor Bengal will prosper by demolishing the zamindars, but drawing the attention of the people to other than agricultural pursuits, setting up industries, and industrial schools will go a great way in that direction.

Gentlemen, when Act X of 1859 was enacted, it was thought that the Government had sufficiently redeemed its pledge of affording protection to the ryots. Sir Frederick Halliday said:—"A heavy obligation towards the raiyat long unfulfilled by our legislature has now been fulfilled by enacting Act X of 1859. Two successive Chief Justices of the High Court of Judicature of this country condemned the new right of occupancy given under that law to ryots as an invasion of the zamindars' rights and as inconsistent with such rights; but Act X was passed, and the zamindars and ryots had been content to abide by its provisions for the last 25 years. Gentlemen, it is now thought that Act X of 1859 had not done enough, and the legislature now thinks of going beyond what had ever been thought of by the most radical members of the Government when enacting Act X of 1859. If the provisions of the proposed Bill are allowed to pass, the permanent settlement under which you hold will be a mere dead-letter, you will be, as the Maharaja of Hutwa has very well expressed it, a 3-anna proprietor in your zamindari, while the 13-anna rental proprietor will be an occupancy-right ryot, mind, not the ryot of the present day, the actual cultivator, whom the Government thinks it its bounden duty to support, but some designing speculator who will come in his place.

Gentlemen, I am not much accustomed to public speaking, but it is a time when all should speak. None of you, I am sure, deny to your ryot rights which properly belong to him. Though you are stigmatised in the highest places, one and all, as rack-renters and

oppressors of your ryots, I am sure you all are fully alive to your duty to ryots. But while you will do justice to others you will doubtless expect to have justice done to you. You will certainly claim the right of being protected in those rights which have been guaranteed to you under the permanent settlement.

Seconded by Rai Joi Prakash Lal Bahadur.

3rd Resolution.

That the provisions regarding the survey and register of khamar lands, those relating to improvements and record of rights, will lead to unnecessary and costly litigation, the effect of which will be the impoverishment and, nay, sometimes the utter ruin of both the landlords and tenants.

Moved by Maharaj Kumar Narendra Narain Pratab Sahai Bahadur of Hutwa.

Seconded by Babu Saligram Sinha of Mednipur, Shahabad.

Supported by the Agent of the Maharani of Tikari and Babu Gajadhur Pershad.

4th Resolution.

That it is unwise to unsettle customary laws and tenures which have been prevalent from time immemorial, and the Behar zemindars look with serious apprehension to the special provisions for the commutation of bhaoli tenures into nakdi, as calculated to affect seriously the interest of agriculture in this province.

Moved by Syed Usuf Hossein Khan.

Seconded by Syed Willayet Hossein *alias* Mehdi Nawab.

5th Resolution.

That the advantages offered by the Bill to the tenants are substantial and new, while those offered to the zamindars are *nil*; that the Bill in fact proposes re-distribution of property between landholders and tenants for what is taken away from some of his rights, and the provisions of the Bill do not fall within the power reserved to the Governor-General at the time of the permanent settlement, to enact laws for the protection and welfare of dependent taluqdars and ryots.

Moved by Moulvi Fazlul Rahman.

Seconded by Kazi Reza Ausem.

6th Resolution.

That a sub-committee of the following gentlemen, with power to add to their number, be formed to draw up a memorial stating all the objections to the provisions of the Tenancy Bill, and it be submitted to Government through Behar Landholders' Association.

Moved by Munshi Bahadur Ali Khan.

Seconded by Agent of Tikari.

Supported by Mahomed Ali Khan of Durbhangah.

After a vote of thanks to the chair, proposed by Mir Shamshul Hoda and carried by acclamation, the meeting dispersed.

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No 188 R L., dated Calcutta, the 2nd July 1883.

From—J. MONRO, Esq., Commissioner of the Presidency Division,

To—The Secretary to the Board of Revenue, Lower Provinces

WITH reference to your letter No. 351A, dated the 29th March 1883, I have the honour to submit the report on the Bengal Tenancy Bill, therein called for.

2. I have found it impossible to hold a conference with district officers, as the adoption of such a course would have involved their absence from their districts for several days, at a specially busy season of the year. The reports which I have received I forward herewith.

3. I have had many conversations on the subject with officials, zemindars, and others, and have omitted no opportunity of ascertaining the feeling of the people generally in connection with this important measure.

4. As was to be expected, the landholding class is most strenuously opposed to the Bill, and there is no doubt that a most uncompromising resistance to its provisions will be manifested. There is a general feeling amongst members of the landholding class that zemindars will practically be effaced and reduced to the position of annuitants or partners with their ryots in the profits of land, and that the Bill, with its manifold provisions in favour of the ryots, constitutes a distinct infringement of the rights which they conceive were guaranteed under the terms of the permanent settlement, and which they have certainly exercised without dispute for nearly a century.

5. It is rather curious to notice the different views of the effect of the Bill as taken by the planters of Lower Bengal and of Behar. The majority of indigo planters in Lower Bengal, who are often landholders themselves, are opposed to the Bill, although some of them do not think that much harm will be done, specially with reference to the enhancement clauses. In Behar, again, I have noticed a decided feeling arising that the interests of the planters, hitherto identified with those of the landlords in consequence of the tikadari system, will now be found to be on the side of the ryots.

6. The ryots themselves are as usual ignorantly apathetic on the subject. They have heard some rumours of impending changes, and, in some instances, agitators have made them believe that the millennium of the ryots is at hand, when they will pay only nominal rents for, and reap all profits from, their land, but as a rule they have no intelligent idea on the subject, and it is difficult to define any feeling which they may have on the matter. Had the seasons of late years been unfavourable, no doubt we should have found them in a more complaining mood, but with good harvests they are not disposed to repine, and only wish for

scarcity to show itself in some district other than their own, that they may reap the benefit of increased prices of their crops. Under any circumstances it would be very difficult to convey to the mind of any ryot an accurate impression, or to create in it any definite idea, of the meaning of the proposed alterations in the law, with reference to compensation for improvements, compensation for disturbance or the doctrine of Merger.

7. I have to apologize for the hurried style in which my notes upon the Bill have been made. At this time of year when officers are overwhelmed with annual reports of all kinds, it is simply impossible for any one to find time for a leisurely discussion of such an important subject as a complete change in the relations between landlord and tenant. I have therefore been compelled to make notes on the Bill as I could find time amid the pressure of exceptionally heavy current work. It is not open to me now to discuss the principle of the Bill. Upon that question, as connected with the rights of the zemindars under the permanent settlement, I have already expressed an opinion, and, after the authoritative declaration of the Government of India of their views upon that point, it is not for me to re-open the discussion. There is, however, one point on which I venture to think I may still be permitted to make a remark. The Bill is framed for the purpose of carrying out a pledge given by the Government with regard to the rights of ryots, at the time of the permanent settlement. And in pursuance of the effort to fulfil this pledge it is now proposed to give the ryots fixity of tenure, fair rent, and freedom of sale of their holdings.

8. How far these privileges or rights were guaranteed under the terms of the settlement has been disputed, how far the ryot requires fixity of tenure which he has, in Lower Bengal, practically got, is also a question upon which there have been differences of opinion. Whether freedom of sale will in reality confer on the ryots the boon which it is intended to give them, is also an open question, but there is and can be no difference of opinion as to the ryot being required to pay a fair rent for any holding which he possesses.

9. Many provisions have been laid down for the purpose of ensuring to the ryot exemption from demands of unfair rent, and the pledge given at the time of the settlement has been frequently referred to as the justification for the enactment of such provisions. Whether the terms of the pledge then given justify the provisions of the law which it is proposed to introduce, has been, and will be, hotly contested by the zemindars. But there is one portion of the pledge given by the framers of the settlement, as to the interpretation of the terms to which there is no uncertainty, and yet I find no proposal made as to any intention being entertained of effectively fulfilling our promises—I mean the pledge as to the absolute abolition of illegal cesses.

10. It seems to me that this question is of the most vital importance in considering the point of fairness of rent, and it appears almost a mockery to devise a multitude of provisions for regulating the exact amount of money to be paid by the ryot under the name of rent, while we leave unlimited and unchecked (for the declaration in sections 125 and 124 practically impose no greater check than exists now) the demand on the part of rent receivers of every degree with reference to illegal cesses. How can we with propriety call any rent *fair*, which is to be supplemented by practically unlimited illegal demands of cesses, which, although abolished by law, the representative of the zemindar in council describes as the "moral adjustment of enhanced rent"?

11. There can be no doubt as to the meaning of our ancient pledges in this respect, there can be no doubt as to the absolute non-existence of any right on the part of zemindars to realize such cesses, and there can be no doubt as to one having for nearly a century permitted the ryots to be unwarrantly oppressed, without giving them any substantial relief against the illegal and extortionate demands made upon them by zemindars and other rent receivers.

12. It seems to me that it is our bounden duty, when talking of the force of pledges given nearly a century ago to put an effectual stop to illegal oppression before regulating legal demands. Especially do I think so, when I believe, as I do, that the summary and stern repression of such illegal oppression by zemindars, will do more to ensure to the ryot the payment of a fair rent than many elaborate restrictions and provisions, such as are contained in the present Bill.

13. It is notorious that such illegal cesses are levied in almost every zemindari in the country, although all such irregular demands have been by law abolished. It is equally notorious that such demands are paid by tenants, although they press very heavily on the ryots, and raise their contributions to their zemindars far beyond the standard of moderate enhancement. It must be also clear why such irregular payments are paid by ryots, who are not ordinarily liberal in the discharge of their duties to the landlord. The reason simply is, that the ryot submits to these exactions rather than have his rent enhanced by order of Court, because he has no security that, after such legal enhancement, the demand for illegal cesses will in any way be relaxed or diminished, and because he has no practical protection under the law against the illegal exactions of his zemindar with regard to such cesses.

14. It seems to me a disgrace to our administration that we should admit our incapacity to deal with such universal and flagrant breaches of the law, and the ryots, it appears to me, can hardly be expected to attach much value to our professions of legislative interest in their welfare, when we fail to devise effectual means to protect them against demands of their zemindars, which are admittedly illegal, which are undoubtedly oppressive, and which will continue to render any rent unfair, although its fairness may be secured by many provisions in a Tenancy Bill.

15. If the ryot were first of all secured against, what I would term an immoral "adjustment of enhanced rent," in the shape of illegal cesses, and if the zemindars were rigorously

punished for such undoubted infractions of the laws of the land, we should then have made the first step to secure fairness of rent, and should have removed the chief objection of the ryot to legitimate enhancement of his dues to his landlord. Till that is done, (and if there is any meaning in promises, we are pledged to do it), I cannot believe that any real progress will have been made in rendering payment of rents by ryots *fair*.

16. I come now to consider the details of the Bill, and here I find myself in a peculiar position. Holding the views which I have previously and on another occasion expressed, I cannot consider many of the provisions of the Bill as fair to the zemindar, with reference to the rights, which they have enjoyed for a century, and yet I am precluded from calling in question the principle upon which the Bill is founded. My remarks must therefore be more general than if I were supporter of the Bill suggesting modifications in details based upon a principle which I thoroughly endorsed.

17. Before going on to consider the more important provisions of the Bill generally, I have a few remarks to make regarding khamar land as dealt with in Chapter II. So far as regards Lower Bengal, there is no such extensive recognition of the difference between *khamar* and *ryoti* land, as exists in Behar with reference to *zerat*. I question very much whether many zemindars in Lower Bengal could tell accurately how much khamar and how much ryoti land is included in their jummabundis, when they possess such documents, and still fewer landlords would be able to file any documentary evidence as to lands having been held as khamar. For example, all *utbundi* lands are considered to be khas lands, but yet I never heard of zemindars calling them khamar. Similarly, all *nakshan* holdings revert to the possession of the zemindar, and lands in churs and alluvial formations are undoubtedly in his exclusive possession.

18. If the definition given in section 5 of khamar land is not extended, so as to cover *utbundi* and *nakshan* lands, the inclusion of such lands under *ryoti* will be most unjust to the zemindar.

19. Further, if the register which is now to be prepared is never to be amended, how will chur lands coming subsequently into the possession of a zemindar be shown?

20. I am bound to say that I have not seen in Lower Bengal any manifestation of any tendency on the part of zemindars to bring ryoti into the category of khamar lands. This tendency undoubtedly exists in Behar, and for Behar this chapter is chiefly framed. I have, however, seen indications of a tendency on the part of ryots to filch khamar land when they got a chance, and call it ryoti.

21. It seems to me that acting upon the presumption that all land is ryoti, until the contrary is shown, the zemindars will have, under the circumstances of Lower Bengal, great difficulty in establishing their rights to what really is khamar. When the time comes for a field survey of the province (and until this is done we shall never have any really satisfactory determination of the questions at issue between landlords and tenants), it would be fair to mark off as ryoti the amount of land held by each ryot as ryoti according to jummabundi, leaving the surplus to be adjudicated either as khamar or ryoti according to proof adduced. In many cases, I have no doubt that such surplus would represent much khamar land that had originally been filched from the zemindar, owing, I admit, to his own laches by the ryots.

22. With reference to the provisions of section III, there is not much to be said. I am bound to say that the extension in section 15 of the presumption from twenty years holding at unchanged rent, is in my opinion going too far. I much prefer the previous proposal of limiting the proof required to 20 years' unchanged rent before 1859.

23. Is the provision in section 20 to have retrospective effect with reference to the thousands of temporarily settled estates in Bengal?

24. I have no special objection to the provisions for enhancement of rent of tenures.

25. Why should not the right of pre-emption be given to the landlord in the case of transfer of tenures? It is of quite as much importance to him to keep out an objectionable transferee of a tenure as of an occupancy holding.

26. With reference to registration of tenures, I see no reason for the provisions of section 28. It is advisable to restrict such transactions to the parties themselves, and not to bring in the aid of the courts or revenue officers on every occasion. The landlord can always be brought to account for refusal to register as provided in section 32.

27. With reference to occupancy ryots, and the provisions of the Bill regarding them, I object to the extension of the provisions of Act X of 1859, specially with reference to the definition of a settled ryot in section 45.

2nd.—With reference to what seems to me the unjust provisions of section 47.

3rd.—With reference to transferability of the tenure.

4th.—With reference to sub-letting.

5th.—With reference to the abolition of freedom of contract.

6th.—With reference to the provisions of sections 59 and 61 of Chapter VI. With reference to enhancement of rents by contract, other limit of money rent payable by a settled ryot taking a new holding.

28. I have nothing new to add to the arguments of those who object to the extension of occupancy rights proposed by the Bill. It seems to me as to them unjust that the element of *residence* should not be an essential feature of the status of a settled ryot. I see no reason why a settled ryot having a right of occupancy in certain lands should, as a matter of right, have the same status in lands, which may be miles away from his village, although within the same estate, and the accrual of a right of occupancy to a settled ryot, in any lands subsequently acquired by virtue of his tenancy of lands at the time of his becoming a settled ryot, seems to

me an unjust extension of occupancy right. I do not object to the tenures of occupancy ryots being made transferable subject to the consent of the landlord, or even without such consent because as a matter of fact such transfers of tenures have become a matter of custom (although it may be remarked in passing that the customary exercise of rights *by zemindars* for a century is not admitted by the framers of the Bill, as a valid argument for arrogating such rights), but I question very much whether this power of transfer will be such a boon as is represented to the ryot. It will undoubtedly enable him to raise money for the purpose of spending it but that it will, with his improvident habits, convert him into a thrifty peasant, I have very grave doubts.

29. There is no doubt that this unfettered power of transfer will encourage the disputes and faction quarrels which have always been a prominent feature in native families, and if in addition to this power of transfer is given the privilege of sub-letting, without consent of the landlord, the latter will very soon find his estate full of occupancy ryots or their dependents in the shape of his bitterest enemies.

30. The right of pre-emption on the part of the landlord is good so far as it goes, but the condition of being obliged to let the land as an occupancy holding does away with much of the protection which the right of pre-emption affords.

31. If the tenure is allowed to be transferable, I would, on no account, permit sub-letting, which will simply encourage ryots to let out their tenures, and prey upon the sub-tenants. Such a system will in the end lead to sub-tenants or ordinary ryots under occupancy holders being much more rack-rented than they are now.

32. As to the abolition of freedom of contract, I altogether fail to see the justice of the provision. I do not find anything of the kind in any of the settlement regulations, and I fail to see how the ryot is ever to learn how to stand alone, if he is to be rigidly protected against himself. The ryot is to be allowed freedom in every respect, except when he enters into an agreement with his landlord. If this is not setting class against class, and teaching the ryot to look upon the landlord as his natural enemy, words have no meaning. I would certainly leave the parties to contract as they please, and the courts should not, in my opinion, refuse to recognize such contracts. Denial of the right of contract has a distinct tendency to make the landlord resort to illegal cesses, and the ryot acquiesce in such improper exactions. For, if the tenant is in need or wishes in any way to propitiate his landlord, he will agree to pay a *mangan* without much hesitation, seeing that the right to make a legitimate agreement with his zemindar is denied to him. I must confess that, according to my experience, the ryot of Lower Bengal is not such a down-trodden or helpless creature, with reference to his own interests, as he is represented to be. I notice that the case of Backergunge is cited as an instance of exceptional prosperity amongst ryots, brought about apparently by the existence of a large number of peasant-proprietors in that district. I am not prepared to attribute the prosperity of Backergunge to this cause, but if peasant-proprietorship in that district has caused prosperity, it is undeniable that such a system of land tenure has also brought with it a development of turbulence unknown in any other district. But leaving Backergunge out of the question, I can point to the majority of ryots having occupancy rights in Dacca, Tipperah, Chittagong, Jessore, Noakhally, and other districts, as being men who are eminently calculated to look after their own interests. It seems to me hardly consistent to inculcate upon the people by one enactment their fitness to govern themselves, and in another to provide them with a means of protection against their own acts. To give them power to vote with reference to matters about which they express little concern, and to deny them a right to contract with regard to their rent, about which they are supremely interested.

33. With reference to the provisions for enhancement, it seems to me that, considering the difficulties of the subject, the proposals embodied in the Bill are on the whole fair. It might be simpler to eliminate the standard as regards rate of one-fifth of the average annual value of the gross produce of the land, and lay down the principle that the enhanced rent should not exceed so many annas in the rupee of rent, but I am not prepared to suggest any better provisions than those laid down. The general provisions as to the enhanced rent not being more than double the previous rent paid, that it may be ordered to take effect gradually, and that no re-enhancement shall take place for ten years, are in my opinion salutary. I do not see that zemindars have any reason to complain of these provisions, and I quite admit the necessity for giving the ryot protection against the ever recurring threats of enhancement which have embittered the relations between landlords and tenants.

34. I am not of opinion that it will be practicable to frame tables of rates such as are proposed, without an amount of harassment and expense to both landlords and tenants, which would be ruinous to them, and, even when prepared, I question very much whether it would be fair to either party to keep them in force for even ten years. Whether, when we have a field survey, it may be possible to frame such tables of rates with less expense, is another question.

35. With reference to the provisions regarding bhaoli rents, I must admit that my service having been almost entirely in Lower Bengal, where this system is not so prevalent as in Behar, I am not in a position to give any opinion derived from practical experience.

36. With regard to ordinary ryots, the provisions of the Bill militate against all previous practice under which a tenant-at-will was allowed to hold land in accordance with agreement entered into between him and his landlord. I think it unwise that such a practice should be disturbed, and am not prepared to support those provisions which fix a maximum of rent to

be demanded, and which introduce the entirely new system of compensation, for the disturbance of tenancy of a man who has no right to such tenancy except under agreement with his landlord.

37. Throughout Lower Bengal there is no necessity for recognizing any other principle than that of mutual interest between landlords and tenants, in determining the relations which should exist on the part of landholders to tenants-at-will. No landholder in his senses will now aim at extravagant enhancements, for such a policy will very soon relieve him of his ryots. Most landlords are now anxious to get ryots to settle, and eviction, even of tenants-at-will, is a procedure which is, I imagine, more sparingly resorted to in Lower Bengal than in any country that I know of. The relations, therefore, between landlords and tenants-at-will may safely be left to determine themselves according to the economic laws of supply and demand.

38. Instalments of rent should, in my opinion, be payable according either to custom or contract. Interference, such as is contemplated in section 98, is not desired by either ryots or zemindars, and does not appear to me to be desirable.

39. It is very proper that receipts should be given as laid down in section 100, and I have no doubt that these provisions will do much to stop the forgery, which prevails to such a lamentable extent in connection with rent receipts. I do not, however, see that the ryot should be entitled to have such a statement of account as is specified in section 101, without paying a fee for the same. Such a statement is entirely unusual, and in a large zemindari will involve considerable expense on the landlord, in the way of keeping up clerical establishments. The rent receipt is sufficient protection to the ryot, and if he wishes to have a further safe guard, he should, in my opinion, pay for it.

40. The provision as regards deposit of rent are unobjectionable, except that in 103 (*a*). The ryot should not be allowed to deposit simply *when he has reason to believe* that rent will not be received or a receipt given. He should first make the tender as at present, and, after refusal made, should be at liberty to deposit.

41. The chapter upon compensation for improvements seems to me to be based upon an entirely mistaken theory as to the wishes and acts of Bengal ryots with regard to improvements. It seems to be assumed that every ryot who has a holding is wishful to improve it, and that he only requires fixity of tenure to invest capital in developing the latent resources of his land. Hitherto he has been afraid to invest money owing to the uncertainty of his tenure and the oppressions of his landlord. Once fix the former and restrain the latter, and it is assumed that the ryot will have courage to improve his land, which has hitherto remained less productive than it should have been.

42. Now there have been for centuries, and are now, millions of ryots who have had fixity of tenure, and to whom the provisions of the Bill on the subject of the existence of tenant right are no novelty. Have these ryots shown any inclination to invest capital in improving their land; have they evinced any desire to increase the productive powers of the land, even by the elementary process of manuring it; have they done anything under the influence of fixity of tenure in the way of constructing for the benefit of their lands any of the numerous works specified in section 26 as agricultural improvements?

43. I do not know what may be the condition of affairs in this respect in other parts of the province, but in Lower Bengal the ryots with rights of occupancy or fixity of tenure have done nothing to improve their lands, and although, if, as is proposed, an opportunity of demanding compensation for improvements is given them, they will be only too ready to advance false claims for mythical expenditure in this respect, I say, without hesitation, that ryots with fixity of tenure have evinced no desire to benefit their land or expend any portion of their supposed savings in developing its resources. Any such improvements as have been made have, so far as my experience goes, been carried out by landlords, and not by ryots, and I see no reason to believe that the ryots, when they have more capital, will change their nature or their habits as regards expenditure, which they think ought to be incurred by their zemindar.

44. If by fixity of tenure the ryot manages to save, he certainly does not spend his profits on his land. He may add to his house, which hardly can be called an agricultural improvement, buy cattle, increase his wife's stock of ornaments, spend somewhat more at marriages and village festivals, but it will not occur to him to improve the land, which, in his opinion, ought to improve itself, which has for ages yielded crops without expenditure on his part on agricultural improvements and which ought to continue so to do.

45. The ryot, so far as my experience goes, does not want to improve his land or be improved himself, he wants to be let alone, and this chapter on agricultural improvements introduces a system which is perfectly new in the bucolic history of Bengal, which is certainly not needed with reference to the acts or wants of ryots at present, and which will infallibly lead to litigation and false claims of every description, such a system will also most certainly lead to landlords declining to undertake or give any assistance to villagers in undertaking village improvements, and when villagers with, as is the case in most instances, opposing interests are left to themselves to carry out so called improvements, the result may be easily imagined.

46. I would not object to seeing the whole chapter excised from the Bill, but if it is to be retained, I am not in favour of giving even the occupancy ryot any right to make improvements for which at some time the landlord may be called upon to pay compensation, unless such improvements have been sanctioned by the landlord. It might be left open to the tenant to compel such consent, if, after application made, the landlord refused to allow any reasonable improvement to be carried out.

47. With reference to tenants-at-will, I would allow no improvements to be made by them without the landlord's consent.

48. The doctrine of merger contained in paragraph 141, is, so far as I am aware, unknown to Indian law, and I find nothing in the papers connected with the Bill which shows me that the application of such a principle is in any way required either by ryots or landlords.

49. The appointment of a common manager in the case of zemindars who are quarrelling is a provision which is very necessary in the interests both of the public peace and private rights. I do not see anything objectionable in the provisions of the Bill on this point. It has been objected that, under the provisions of section 142, any discontented ryot may cause his zemindars much trouble. I do not, however, take this to be the meaning of the words "any one interested in the estate or tenure" in section? If by these words is included *any ryots*, then I think that it should not be within the power of one tenant to set the law in motion. I would not say that the majority of tenants only should have such power, but would leave indefinite the number of ryots having interest in the estate, upon whose application the civil court should take action, unless, "a large proportion (*vide* section 161*a*) of tenants applied," I do not think the civil courts should act.

50. I am quite prepared to admit that, if the provisions of sections XI and XII can be successfully carried out, and, if we can have a record-of-rights made, and rents ascertained, great progress will have been made in reaching a solution of many of the vexed questions at issue between landlords and tenants. The expense of such proceedings as are contemplated under these two chapters will be enormous, and I suspect ruinous to both parties. Before making these provisions of universal application under the order of Government in the cases specified in section 151, Government should, in my opinion, try the experiment thoroughly in Crown Estates We have not yet, in the similar operations which have been carried on in settlements, sufficient data to work upon, and I much fear that the amount of litigation which would be at once excited by the application of these provisions generally, would be very injurious to both ryots and landlords, who might wish to make use of them. At the same time, I believe, that, if the system can be carried out without involving too much outlay, the principle of ascertaining and recording rights and rents paid (I am not quite prepared to go the length of *fixing* rents as proposed) will go a great way towards settling disputes, and facilitate the realization of rents.

51. As to the provisions for recovery of rent which was the beginning of the legislation which has found its outcome in the present Bill, I am afraid that landlords will hardly feel satisfied as to the relief which has been given them. Distraint has been practically abolished, for very few landlords will avail themselves of the provisions of the Bill, which enable them to apply to a Court for permission to distrain as laid down in the Bill. If a landlord has first to pay fees as for a suit, file an elaborate application duly verified and supported by documentary evidence and then finds that when he comes to execute his process, that pending operations at court, the crop sought to be distrained has been removed, as it almost certainly will be, such landlord will not be much encouraged to repeat the experiment in many instances.

52. So far as Lower Bengal is concerned, the existing provisions of the law as regards distraint may be safely maintained. I have no objections to illegal distraint being sternly put down, and I would visit abetment of such offences even with the punishment provided in *section* 186. Such a punishment, however, as I have already pointed out, is much more severe than that provided by the code for practical abetment or connivance at a riot involving perhaps loss of life on the part of a zemindar. If the lighter punishment for such abetment of a serious offence is to be maintained, it seems all are at one that connivance at an act of illegal distraint should be considered of so aggravated a nature as to demand such severe repression.

53. The further provisions for the speedy realization of rent go some way towards simplifying present procedure for recovery of rent, and, so far as they go, must be accepted by the zemindars as provisions in their favour. I am bound to say that *on the principles on which the Bill is drawn*, the zemindars could not expect further relief. I suspect, however, that they expected, and I am not prepared to say that they had not a good right to expect very much more substantial relief as the outcome of their applications for a summary method of realizing rents preferred during the last 12 years.

54. Generally, while I am prepared to accept the provisions of the Bill with reference to enhancement, as on the whole such as landlords under present circumstances cannot complain of, I am bound to say that I consider the provisions of the Bill in most respects unfair to zemindars, and one-sided in favour of ryots. This I hold to be the case with reference to (*a*) the immense extension of the rights of occupancy; (*b*) the bestowal of large rights on tenants-at-will; (*c*) the withdrawal of freedom of contract; (*d*) the provisions with reference to improvements; (*e*) the introduction of the system of compensation for disturbance; (*f*) the practical abolition of distraint, while insufficient relief is given in the way of a summary procedure for realization of rents.

55. Under such circumstances, I cannot convince myself that the Bill, if passed into law, will render practicable a satisfactory solution of the difficulties attending the disposal of the questions at issue; on the contrary, I feel constrained to believe that the application of the various provisions of the Bill must result in endless litigation, active hostility between landlords and tenants, and injury to the property of both.

No. 348G, dated Jessore, the 31st May, 1883.

From—E. J BARTON, Esq., Collector of Jessore,
To—The Commissioner of the Presidency Division.

I have the honour to reply to your circular No. 3RL of 9th April, 1883, requiring my opinion on the Bengal Tenancy Bill.

2. I beg to premise that my remarks are limited to the applicability of the Bill to Lower Bengal, more especially to my own district of Jessore, and that I do not think I am required to refer to the provisions which relate to Behar.

3. I have to inform you that I have doubts if it would be expedient to pass the Bill in its present shape. *I think that a more speedy and a cheaper means of realizing rent is desirable, and that a Bill which secures this would do all that is really necessary.* So far as the Bill endeavours to secure a speedier and cheaper recovery of rents, I am in favour of it.

4. The parts of the Bill which, I think, are open to objection, and which still require mature consideration and modification are those which introduce changes into the respective rights of landlord and tenant, and raise the tenant into the position of a co-partner at the expense of the landlord, without giving the latter any compensation for the property of which he is deprived.

5. I doubt if it is expedient to introduce the drastic and serious changes which the Bill proposes in the substantive law, which at present regulates the respective rights of landlord and tenant. Constant changes in legislation are greatly to be deprecated in this country, and should only be made when a clear and undoubted necessity arises. In the present case, I do not think that any such necessity has arisen. Of course I here speak of Lower Bengal, and of the district of Jessore more particularly. The Bill gives to all ordinary ryots facilities for acquiring the status of settled ryots *against the will of the landlord*, and gives occupancy rights to settled ryots in respect to all ryoti land, *see* sections 88 to 90. It makes occupancy rights transferable, *see* section 50, and limits the maximum of the zemindar's claim to one-fifth gross annual produce in all occupancy tenancies, *see* section 61. The Bill, in important matters, deprives a landlord of liberty of contract with his ryots. I consider that the whole of the above provisions require careful reconsideration and modification, and that some of them, instead of conferring a benefit upon cultivating ryots as they are intended to do, will injure them. I consider that the Legislature should interfere with liberty of contract only in cases of the most pressing necessity, and that no case of this kind has been established so far as the landlords and tenants of Lower Bengal are concerned. I am far from maintaining that the condition of the ryots in Lower Bengal is what it should be, or that their landlords' treatment of them had been such as the Government had a right to expect in accordance with the terms of the permanent settlement. I merely express an opinion that this Bill will not improve matters in either respect, and there is grave reason to fear that it will aggravate the evils which it professes to remedy.

6. With regard to the question how far it is expedient to allow contracts providing against the acquisition of the right of occupancy, I think it is perhaps better to leave the parties to contract for themselves. The in-coming tenant might, in the generality of cases, be prevailed upon to accept the terms offered to him by his landlord, but it is neither fair nor sound upon judicial principles to place a restriction on the freedom of parties to contract as they will. The argument which may be raised in favour of restricting the right of landlords to choose their own terms in letting out their lands to tenants may, with equal force, be applied to all kinds of contracts, and I do not see why landlords should be deprived of their right in a particular class of contracts only.

7. The Bill, in many important particulars, reduces the zemindars to the position of annuitants, deprives them of incentives to improve their estate and the condition of their ryots, and vests important rights over their property in the ryot's rights, which the zemindars have enjoyed for many years, and of which, in my opinion, the present state of the country does not justify the forfeiture without compensation.

8. The opinions of the gentlemen named below are herewith enclosed, in original, for your information.—

NAMES.	Profession.	Opinion whether for or against the Bill.
Mr. W. G. Deare	Sub-Divisional Officer, Jhenida	For the Bill.
„ Tweedie	Indigo-planter and zemindar	Against.
„ Oatts	Ditto ditto	Ditto.
„ Shirreff	Ditto ditto	Ditto.
Moulvie Moazzim Hossein	Small Cause Court Judge and zemindar	Ditto.
Pramatha Bhusana Deva Raya, Raja of Nadanga.	Zemindar	Ditto.
Babu Shyamadhaba Roy	Deputy Collector	For the Bil

Memo. No. 40, dated Jhenidah, the 1st May, 1883.

From—W. G. DEARE, Esq., Deputy Collector,

To—The Collector of Jessore.

Refers to the Collector's No. 78G., dated the 14th April, 1883.

As far as my individual opinion is concerned, it seems to me the Government, in the exercise of an inherent right, have, with much care, labour and research, drafted a Bill which, if it becomes law, will very largely improve the condition of the ryots and subordinate landlords. It will raise the inferior occupants of the soil from the position of serfs, and give them a real interest in their holdings, for they will learn that, so long as they act legally, they will be in a position to assert and maintain certain rights, and be no longer at the mercy and caprice of a landlord. In my opinion the Government are acting justly and in the interests of humanity in legislating for the benefit of a people very largely agricultural. Of course, certain provisions of the Bill are very distasteful to the zemindars, but the Government are considering and dealing with the interests of those who, from their situation, are dependant and helpless and at the mercy of the landlords, whose one aim is gain at the expense of tenants. The Government are not exceeding their authority in limiting the privileges of a rich and powerful, but small, class of landed proprietors, whose interests are also very fairly protected by the Bill.

One landlord's opinion respecting the Bill is, that it is one-sided and calculated to increase difficulties between landlords and their tenants. It is arbitrary and unjust, and the frequency of the expression "notwithstanding any contract to the contrary" shows a total disregard for engagements legally entered into and duly registered, the cancelling of which cannot fail to be disastrous in its effects upon zemindars. But I fear enquiry may disclose that the landlord, taking advantage of his power and influence and of the ignorance and helplessness of the ryot, has bound them under engagements largely beneficial to himself and probably injurious to the ryots. They are bound hand and foot by engagements unprofitable to themselves, and cannot cast off the yoke and improve their circumstances. The Government have a right to step in, and declare that such one-sided engagements shall no longer be recognized, but that the ryot shall have a fair field for his industry.

Such is my opinion. There is great need for legislation, if the ryot is to be emancipated from serfdom and to be allowed to take up a position as a free man, able to turn his industry to the best advantage to himself, to improve his holding, and secure a safe and permanent dwelling, without, in the first place, having to purchase the landlord's permission at a ruinous cost, so long as he acts legally and pays a fair rent. The Bill in its present form will, it seems to me, meet every requirement.

I append a report drafted by the Sub-Deputy Collector, showing the opinion of local Native landholders regarding certain portions of the Bill.

Draft Report by BABU NOGENDRA LAL MITTRA, *Sub-Deputy Collector.*

A public meeting was convened, and the opinion of the respectable inhabitants and pleaders of the sub-division was consulted, and they one and all consider that a slight modification in the Bill would be well for the interest of landlord and tenant, both classes alike.

It seems to me the points of the Bill which require particular consideration are the following:—

(1) Occupancy-ryot.

(2) Proposal for taking away from the hands of the landlord right to give consent to build, excavate tanks, fell trees upon his land, and while the landlord is thus deprived of his right, the tenant has been vested with the right to claim compensation for any improvement in case he be disturbed in his possession even for non-payment of rent.

(3) Proposal to give power to the occupancy-ryot to sell or sublet his right to anybody, without the consent of the landlord.

(4) Direct interference with private contract.

CHAPTER V.

Describes at length how occupancy right is acquired and what right an occupancy ryot can exercise under this Bill. The definition of an occupancy ryot is a broad one, so much so that an occupancy ryot can be classed with that of second grade landlord. This ryot under the Bill can build, excavate tanks, cut trees on his holding, and can sell, sublet, transfer, or mortgage his right without the consent of his landlord. Before anything is said on this class of ryot, I would moot the question who is an occupancy ryot. This class of ryot is not the actual cultivator of the soil, and the expenses and risk of cultivation are not his, but he would enjoy the privileges though. A sub-tenant faces all their risk and pays expenses of cultivation, borrowing money at a high rate of interest from his mohajany. As soon as the harvest season is over, these matans, landlords, and above all, or occupancy ryot, come in for their respective profits. Can a cultivator lay by anything after satisfying these three classes of payees. The Commissioners recognise occupancy ryots who are virtually no better than middlemen. The condition of the peasantry of Bengal has not been bettered, and unless these squatters or middlemen are removed, there is no chance of its getting bettered in future. Again, an occupancy ryot can sublet his holding. I consider a ryot ceases to be a ryot when he sublets his holding. These middlemen do not cultivate land or go to any risk whatever, but they acquire occupancy right by the mere fiat of the law. If the sub-letting be

recognized, the class of middlemen will increase, the condition of the actual cultivator of the soil remaining the same.

CHAPTER X.

Ryot from the time of the decennial settlement has been acting under the old usage of the country, *viz.*, building and excavating tank upon his holding with the permission of his landlord. The landlord in giving permission to the cultivable or arable land, thus converting into a homestead or bastoo one, does not lose. By the introduction of the change surely landlord will be a loser, and more so when he is to deal with a refractory ryot. By the provision of this chapter a proprietor suffers doubly,—1*stly*, being deprived of the right to give permission to the ryot for excavating tank, &c.; 2*ndly*, by being compelled to compensate a refractory ryot for the losses he may sustain by his own refractoriness.

CHAPTER V.

It has been already pointed out that, if the sub-letting system be allowed to go on, then the present occupancy ryot would be converted into middlemen ere long, and middlemen as a class are not actual cultivators of the soil. Now the tendency of the Bill is to give privileges to occupancy ryots, and probably Legislature has in view the bettering of the condition of the actual cultivator of the soil. But if the occupancy ryots convert themselves into middlemen, and the practical effect of the Bill be to better the condition of the middlemen only, then I beg to submit the object of the Bill will be sadly frustrated.

The right of transfer of occupancy right, if given unconditionally to the ryot, would probably move the same effect.

CHAPTER VI.

The next subject which requires notice is the proposal of vesting the revenue officers with the power of interfering with the private contracts between the landlords and tenants. I should think that the contemplated interference cannot have a beneficial effect. Private contracts have always been held sacred by law except in peculiar circumstances. A long-standing quarrel between a landlord and ryot may be put an end to by a private arrangement. And if the parties to a contract consider it beneficial to their actual interest, I think it is not necessary for Government to interfere and unsettle a thing settled by the parties themselves, who, I believe, would understand their interest better than any officer of Government.

Dated Porebattie, the 28th April 1883.

From—C. TWEEDIE, Esq.,

To—The Collector of Jessore.

Having been asked to give my opinion on the proposed Bengal Tenancy Bill, I have read it over carefully, and am struck with dismay at its contents: a more unjust and arbitrary Bill, and one calculated to widen the breach between landlords and their tenants, and gradually stamp out the former, could not well be drawn.

The injustice of the expression which runs throughout the Bill, "notwithstanding any contract to the contrary," is so great, that I cannot believe it will ever be sanctioned by any law-maker who gravely considers the matter—to do away with contracts (terms of tenure), and they are many, which have been legally made and duly registered, and which have greatly tended to calm down the differences which arose by the passing of Act X of 1859; will upset all that has been done during 24 years by those landlords who have given attention to the management of their estates, and will also so unsettle the minds of the tenants that the consequences are likely to be very disastrous.

If existing contracts are not upheld, it will tell particularly hard on European tenure-holders who have paid much attention to settling their estates, and I presume they are not included in the description given by the Government of India in paragraph 85 of their letter No. 6 of 21st March 1882. If they are included, I would recommend the Government to adopt the more open and fair policy of offering to give them compensation to quit the mofussil, making over their properties and factories to the Government, an experiment which could be easily carried out in the Presidency circle, where but few of the indigo-planter landholders remain, rather than gradually but surely stamp them out by the introduction of such a Bill as the Bengal Tenancy Bill with its arbitrary and retrospective clauses.

The framers of the Bill have evidently no knowledge of the people and requirements of the country; they have but one fixed object in view, the annihilation of the landlords.

There is nothing in the Bill which will facilitate the collection of rents, and very little that will really benefit the tenant class.

I annex some remarks upon the sections of the Bill, to which I beg to draw your attention.

Sections 5 and 7 to 13.—In this district there was a quantity of khamar land in every village, a deal of which has been absorbed or taken possession of by ryots, thereby making a ryot's holding larger than it was at the time of settlement when he was supposed to hold one bigah of matan land for Rs. 1-5-3. Would it not be better to define the ryots' holdings, charging them at the very old established rate of the pergunnah for each bigah they claim as belonging to their tenures, and the balance be considered khamar, or in other words, it is now impossible to define khamar without defining the ryots' tenures at the same time. I do not suppose that many landlords mind whether lands are khamar or ryoti, so long as they get

a fair rent for each bigah of land; but there is no doubt that all that a ryot was originally entitled to was one bigah for Rs. 1-5-3—anything he may hold which reduces his nirrick has been got by absorbing the landlord's khamar, except in cases of special pattah.

Sections 14 to 18.—Except under special pattah given by the landlords, no ryots had any right to hold at a cheaper rate than the pergunnah rate, and every ryot should be assessed at that rate who claims to hold at an unchanged rate from the permanent settlement, as such lands as he holds in excess have been absorbed from the landlord's khamar. The above is according to the special custom of the district, and would be understood by both landlords and ryots.

Section 22.—If a ryot was entitled to 5 bigahs at Rs. 1-5-3=Rs. 6-10-3, and has absorbed 10 bigahs of the landlord's khamar, total 15 bigahs, there seems to be no reason why his rent should not be brought up to Rs. 19-14-9 instead of double as proposed, viz., Rs. 13-4-6, which is in accordance with custom.

Section 24.—In a country where it is so difficult to ascertain the exact quantity of land held by a ryot, there seems to be no reason why enhancement should not take place as often as lands can be shewn to be held in excess of what was supposed.

Sections 38 to 42.—There seems to be little use in demanding security from the purchaser of a putni holding, as a ready remedy can be found to recover the rent due by an astum sale: and considering that a bonus of three to four years rental is usually paid for a putni, the security of the holding seems ample to meet the needs of the zemindars.

Section 45.—It seems to be unjust to give a man a right of permanent occupancy who has contracted with his landlord that he shall not acquire such a right; what would landlords and tenants in Scotland say to such a proposal where leases are usually of 19 years? Unjust.

Section 46.—If a ryot does not lose his status title a year after he has absconded, who is to pay the rent of the holding for that year?

Section 47.—This is a section rather unintelligible, especially the proviso; but it is evident that special contract is to be null and void.

Section 48.—This seems to be a useless section, as according to previous sections, a ryot is to acquire an occupancy right without its being granted to him.

Section 49.—This is what has taken place: the ryot has absorbed khamar land into his holding, but it was never supposed that he has acquired a right of occupancy in the excess lands, and he is generally too glad to pay for the excess lands at the pergunnah rate, and have them joined on to his holding when he is farmed out.

Section 50.—This section, to override contract, is unjust and quite contrary to custom. I held a house and land in England, and I was bound by my lease not to sublet, cut trees, nor break up pasture. Had I infringed any of the conditions of my lease, I presume an injunction would have been taken out to prevent me, and justly too.

Sections 51 to 57.—When a ryot has hitherto had no transferable right in his land except that given to him by an arbitrary law, which proposes to override all written contracts and old established customs, it is not likely that a landlord would care to avail himself of the right of pre-emption, and to find himself in the position described in section 56, by which he would have spent his money, and be in the same position as he was before.

Section 59.—It is unjust that a revenue or registering officer should interfere between two parties contracting, or arbitrate as to what should be, unasked. It is surely sufficient that the parties contracting are satisfied, and that the registering officer is satisfied as to the identity of the executant, and that he knows the terms of his contract.

Section 61.—This is decidedly unjust. It would be better to say that ryots are not competent to contract, and that no contracts would be binding unless made by a Government officer as the guardian of the ryot.

Section 72.—When Government officers, with an expensive staff, undertake to draw out tables, unpetitioned for, it seems hard that the occupancy ryots and the landlord should be called on to pay their salaries.

Section 74 (2).—It seems difficult to understand why a contract should be binding on a landlord and not on a tenant.

Section 76.—Double or any other proportion seems to be arbitrary. It would surely be more equitable that rent should be paid at a fair rate for each bigah acknowledged to be held, whether it should be an increase of quarter, double, or treble.

Section 78.—It is surely fair that a fresh suit for enhancement should lie whenever just cause arises, such as its being ascertained that more land is held by the ryot than what he is paying for, and which by collusion or mistake was wrongly measured; or, where four bigahs were reported to the landlord as within the ryot's holding, when there were actually six bigahs. In a country where corruption is so rife, ten years is a long time to wait to have an error rectified.

Section 79.—When a ryot is allowed to sow what crops he likes without consideration as to their being exhaustive or not, and uses no manure to replenish the land, and has bound himself by contract not to ask for a reduction, it is unjust that he should be able to go into court and claim a reduction when the land has become exhausted by his bad farming, and the landlord has been prevented by law from having any say as to the rotation of crops. Rotation of crops so as not to impoverish the soil, also a clause about manuring, are strictly looked to in all English leases.

Section 86.—This section is surely not in accordance with English law.

Section 98.—This section would come very hard on tenure-holders, many of whom are bound by contract to pay to their superiors by monthly instalments. Where is the money to